

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 69.

ADA E. H. VAN SYCKEL, IN HER OWN RIGHT, AND
MARGARET ETHEL VAN SYCKEL ET AL., BY ADA E.
H. VAN SYCKEL, THEIR NEXT FRIEND, APPELLANTS,

vs.

JUAN JOSE ARSUAGA ET AL., PARTNERS UNDER THE
FIRM NAME OF SOBRINOS DE EZQUIAGA, AND PAUL
A. ENGLISH.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
PORTO RICO.

FILED JULY 25, 1911.

(22,819)

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1 THE UNITED STATES OF AMERICA.
District of Porto Rico, ssz.

At a Stated Term of the District Court of the United States for Porto Rico, within and for the District aforesaid, Begun and Held at the Court-rooms of said Court, in the City of San Juan, on the Second Monday of April, Being the Thirteenth Day of that Month, in the Year of Our Lord One Thousand Nine Hundred and Eight, and of the Independence of the United States of America the One Hundred and Thirty-second.

Present: The Honorable Bernard S. Rodey, Judge.
Among the proceedings had was the rendition of a Final Decree in the following case, to wit:

ADA ELMIRA HIRST VAN SYCKEL et al.
vs.
SOBRINOS DE EZQUIAGA et al.

Be it remembered, that heretofore, to wit, on the eighth day of March, A. D. 1907, came the complainants by their solicitors Pettingill & Leake, and filed their bill of complaint in this cause, which said bill is as follows, to wit:

To the Honorable Bernard S. Rodey, Judge of the United States District Court for Porto Rico, in Chancery Sitting:

Ada Elmira Hirst Van Syckel in her own right, and Margarita Ethel, Barbara Paul, William Henry, John Archbold, and Alma Louise Van Syckel, by the said Ada Elmira Hirst Van Syckel as their next friend, all being citizens of the United States, bring this their bill of complaint against Juan José Arsuaga, José Pío Arsuaga, Pedro Arsuaga and Nicasio Arsuaga, who are all loyal subjects of the King of Spain, composing the mercantile partnership doing business in the city of San Juan, Porto Rico, under the firm name and style of Sobrinos de Ezquiaga, and Paul A. English, who is a citizen of the United States residing in Porto Rico.

And thereupon your orators complain and say that your oratrix Ada Elmira Hirst Van Syckel is the widow of Paul Van Syckel, who died in Havana, Cuba, on the 27th day of December, A. D. 1905, and the remaining complainants are the legitimate children of your said oratrix and said Paul Van Syckel, deceased; that said Paul Van Syckel died as aforesaid without leaving any last will and testament, and these complainants are his heirs at law; and that your oratrix Ada Elmira Hirst Van Syckel has obtained Letters of Administration upon his estate from the Probate Court of Crawford County, State of Pennsylvania, where said Paul Van Syckel was domiciled at the time of his death.

Your orators further represent unto your Honor that on and be-

fore the 23rd day of June, A. D. 1897, one Emilio Montilla y Valdespino was the owner in fee simple of a certain tract of land or plantation in the jurisdiction of the municipality of Bayamón, Porto Rico, composed of 314 cuerdas and known by the name of "Santa Cruz," a more particular description of which will appear in the documents hereinafter referred to and made Exhibits to this bill; and that said Paul Van Syckel in his lifetime, to wit: on the day and year last above mentioned, obtained from said owner a lease of said plantation "Santa Cruz," with exception of 35 cuerdas, for an indeterminate period of time to continue at the option of said lessee as long as the stipulated rental of 105 pesos provincial money, equivalent to \$63, gold, per month was properly paid; all of which will more fully appear from a certified copy of said lease herewith filed, with its translation, marked Exhibit "A" and prayed to be taken and considered as a part hereof.

Your orators further represent that by a Notarial Act executed on the 16th day of December, A. D. 1899, said Paul Van Syckel elected to bind himself to continue as lessee under the lease aforesaid for a term of at least six years, without waiver of the right of said lessee to continue the same for as much longer a period as he might desire, whereby said lease became entitled to be registered in the Registry of Property and was registered therein according to law in Book —, folio — of Bayamón on the — day of December aforesaid; the particulars of which Notarial Act will more fully appear from a certified copy thereof herewith filed, marked Exhibit "B" and prayed to be taken and considered as a part hereof.

Your orators further represent that, previous to the making of said lease to said Paul Van Syckel, the said owner Montilla had mortgaged said plantation "Santa Cruz" to one Marxauch, who in the year 1899 began a suit to foreclose the same, whereupon said Paul Van Syckel brought a suit against both Montilla and Marxauch to redeem the property in question from such foreclosure and to obtain an assignment of said mortgage in subrogation of the rights of said Marxauch as mortgagee; that as a result of said suit said Van Syckel paid the amount due on said mortgages to said Marxauch and the latter transferred his mortgage rights to said Van Syckel by a Notarial instrument dated March 16, 1900, whereby said Van Syckel became the owner of a mortgage lien against the whole of said plantation "Santa Cruz" for the sum of \$10,500 provincial pesos, or more.

Your orators further represent that in the month of June, A. D. 1900, said Paul Van Syckel and the defendant firm of Sobrinos de Ezquiaga entered into a contract of partnership for the carrying on of agricultural pursuits under the firm name and style of P. Van Syckel & Company for the term of two years, and to this partnership said Paul Van Syckel ceded and transferred his mortgage right and lien aforesaid over said plantation "Santa Cruz" as a part of his contribution to the assets of said firm; and that upon the expiration of its term said partnership was extended for another term of four years; all the terms of which partnership will more fully appear

from true copies of the Notarial Acts by which the same was created and continued, with their translations, herewith filed and marked Exhibits "C" and "D" and prayed to be taken and considered as a part hereof.

Your orators further represent that at the time said partnership of P. Van Syckel & Company was formed it was mutually understood and agreed between said Van Syckel and said Sobrinos de Ezquiaga that the mortgage right and lien upon said plantation "Santa Cruz" so ceded by said Van Syckel to said partnership as aforesaid should be subject to the individual rights of said Van Syckel under the lease heretofore referred to and made Exhibit "A" to this bill; but, in order that said agreement might be more explicitly and solemnly recognized, the said parties thereafter, to wit: on the 27th day of July, 1901, executed a Notarial instrument for that purpose; all the terms of which will more fully appear from a certified copy of the same, with its translation, herewith filed, marked Exhibit "E" and prayed to be taken and considered as a part hereof.

Your orators further represent that thereafter, to wit: in the month of September, 1901, said Montille not having paid either principal or interest on said mortgages, said firm of P. Van Syckel & Company began their suit to foreclose the same and as a result of said suit acquired the title to said plantation by adjudication, but with the express reservation of the leasehold right of all except 35 cuerdas thereof, recognized to exist and continue in said Paul Van Syckel; and that the legal title to said plantation "Santa Cruz" subject to the leasehold right aforesaid, still remains vested in the partnership of P. Van Syckel & Company; but that said leasehold right has continued in existence and been recognized by defendants during all the various transactions in this bill of complaint set forth and still remains an existing right and the property of complainants as the heirs at law of said Paul Van Syckel, deceased.

Your orators further represent that said Paul Van Syckel also transferred and conveyed to said partnership of P. Van Syckel & Company as a part of his contribution to the assets of said firm the title to a certain tract of land situated in the jurisdiction of Toa Baja called "Plantaje;" a more particular description of which is contained in said Notarial agreement of partnership herewith filed as Exhibit C; that said defendants Sobrinos de Ezquiaga as the bookkeepers and accountants of said firm of P. Van Syckel & Company have always carried the agricultural operations of this tract of land under a separate head and name as the Plantaje Sugar Company, but so far as your orators know said property belongs to, is and has been in the possession of, and is being operated by said partnership of P. Van Syckel & Company, and the separate account so carried as aforesaid is merely a question of bookkeeping.

Your orators further represent that on the 22nd day of August, 1905, the defendant Paul A. English and the firm of P. Van Syckel & Company formed still another partnership for the purpose of developing the cultivation of said plantation "Santa Cruz" and planting sugar cane thereon, under the firm name of the "Santa Cruz Sugar Company," in which the defendant Paul A. English

4 had an interest equal to 15% of the Capital and the remaining 85% was contributed by said firm of P. Van Syckel & Company and that said last named agreement of partnership further provided that said last mentioned firm should have exclusive control of the business of said new firm, and that a rental of \$175 per month

your orators or their representatives any voice in the management of the affairs of said partnership.

Your orators further represent that a part of said tract of land called "Plantaje" has been devoted by said firm of P. Van Syckel & Company, to the cultivation of oranges and pineapples; that said cultivation has been poorly cared for and greatly mismanaged under the control of said defendant partners; and that if such management is continued the money expended in such cultivation will become a total loss. And orators further allege that the accounts rendered by defendants Sobrinos de Ezquiaga of the returns from the cultivation of "Santa Cruz" and a part of "Plantaje" in sugar cane have been very unsatisfactory in amount and your orators charge that there has been either gross mismanagement or incorrect returns, which of the two your orators are unable to state because of the ignorance of said business in which they have been kept by said defendants.

Your orators further represent that, as appears from the respective agreements of partnership, copies of which have been heretofore referred to, both the partnership of P. Van Syckel & Company and that of the Santa Cruz Sugar Company have expired by their own limitation and your orators and said defendants are unable either to agree on the terms upon which the business shall be continued or upon which the same shall be closed up; wherefore it becomes necessary that this Court should appoint a Receiver to take charge and control of the property of said respective partnerships and to manage the same under the direction of this Court until the debts of said partnership may be paid, their other business affairs adjusted, and the partnership assets properly and justly divided between them.

Forasmuch, therefore, as your orators are without remedy in the premises except in this court of equity, and to the end that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may according to the best and utmost of their knowledge, information and belief, full, true, direct and perfect answer make to this bill, but not upon oath or affirmation, the benefit of which is hereby expressly waived by your orators; that the said copartnerships heretofore existing under the firm name of P. Van Syckel & Company and the Santa Cruz Company, as in this bill alleged, may be declared to have expired by limitations of time and to be dissolved; that the several tracts of lands herein described may be adjudged and decreed to be partnership property, and assets of said respective firms, and may be divided or distributed between said partners according to their respective shares, or sold if it shall be found that no equitable division of the same can be made—but

always subject to, so far as the 279 cuerdas included in the original lease to said Paul Van Syckel is concerned, to that lease and the rights of your orators thereunder which shall be recognized and confirmed; that a Receiver of all the assets of both said copartnerships may be appointed by this honorable Court; that an account may be taken of all and every the said copartnership dealings and transactions up to the time of such appointment, and also an account of the moneys received and paid by the said defendants in regard thereto; that the said defendants may be directed to pay to your orator what, if anything, shall upon such accounting

should be paid to the party entitled thereto without specifying the name of such party; all of which will more fully appear from the Notarial contract of partnership, a true copy of which with its translation is herewith filed, marked Exhibit F and prayed to be taken and considered as a part hereof.

Your orators further represent that according to the articles of copartnership of said firm of P. Van Syckel & Company both the said Paul Van Syckel and the managing partner of said firm of Sobrinos de Ezquiaga were to have an equal voice in the management of the affairs of said first mentioned firm, but that after the death of said Van Syckel the management remained exclusively in the hands of said defendant firm; that after the formation of said "Santa Cruz Sugar Company," of which said defendant firm of Sobrinos de Ezquiaga has always had the management and kept the accounts, the first statement was rendered in December of the year 1905, at which time said Paul Van Syckel was already so ill as to be unable to attend to business and said statement and others subsequently sent were largely unintelligible to complainants on account of their lack of knowledge of said business affairs; but that complainants aver that by the partnership agreement constituting the said "Santa Cruz Sugar Company" the rental of said plantation was to be paid to whom it might correspond, and that said rental should have been paid to said Paul Van Syckel less the amount due from the latter as rental under the lease recognized as superior to the rights of said firm of P. Van Syckel & Company.

Your orators further represent that both said partnership of P. Van Syckel & Company and the subsidiary partnership of Santa Cruz Sugar Company expired by limitation of time in the month of June of the year 1906 and no agreement to extend the term of either of said partnerships has been made; that your oratrix Ada Elvira Hirst Van Syckel has been in negotiations with defendants Sobrinos de Ezquiaga looking to a renewal and extension of said partnership relation but defendants are unwilling to agree to any renewal without such radical changes to the disadvantage of complainant's interests as makes it impossible to accede thereto; and that said defendants have remained, and claim the right to remain, in charge of said partnership business without any interference or control on the part of complainants or any representative of theirs, a right not given by said articles of partnership or by the law.

Your orators further represent that on both said plantations "Santa Cruz" and "Plantaje" are growing crops of sugar cane which have been raised with the money respectively belonging to the two partnerships hereinbefore described; that said crops of sugar cane are now ready to cut and deliver for grinding; and that the defendants Sobrinos de Ezquiaga, as managers of said respective
 5 partnerships, have already begun to cut said crops of cane and cause the same to be ground and to receive the proceeds of the same, without giving to your orators or any representative of theirs opportunity to ascertain or verify the amount of cane so cut or the proceeds derived therefrom, thus leaving the interests of your orators entirely in the hands and at the mercy of defendants Sobrinos de Ezquiaga; and that said defendants have refused to give

appear to them, your orators being ready and willing and hereby offering to pay to the said defendants what, if anything, shall appear to be due to them; and that the said defendants in the meantime be restrained by the order and injunction of this honorable Court from collecting or receiving any of the debts due and owing to said co-partnerships and from interfering with or molesting such Receiver in the custody and management of such property and commanded to turn over to him, when appointed, all assets, choses in action, money, and other property in their possession or under their control rightfully belonging to either of said partnerships; that upon said accounting the Court may make an order of distribution of the net assets aside from the real estate, between the partners, or their representatives, according to their respective shares; and that your orator may have such other and further relief as equity may require and to Your Honor may seem meet;

May it please Your Honor to grant unto your orators a writ of subpoena in chancery, directed to the said defendants Juan José Arsuaga, José Pío Arsuaga, Pedro Arsuaga and Nicasio Arzuaga, as co-partners under the firm name of Sobrinos de Ezquiaga, and Paul A. English, commanding them and each of them, on a day certain therein to be named and under a certain penalty therein to be expressed, to be and appear before this honorable Court, and then and there direct and perfect answer make to this bill of complaint.

PETTINGILL & LEAKE,

Solicitors for Complainants.

UNITED STATES OF AMERICA,

District of Porto Rico:

Ada Elmira Hirst Van Syckel, being first duly sworn, says that she is one of the complainants named in the foregoing bill; that she has read the same and knows the contents thereof; and that the matters and things therein set forth and alleged are true of her own knowledge or derived from recorded instruments except such things as therein alleged upon information and belief and those things she believes to be true.

ADA H. VAN SYCKEL.

Sworn to and subscribed before me this 8th day of March, 1907.

H. H. SCOVILLE,

Clerk Dist. Court of U. S. for P. R.,

By A. M. BACON, *Deputy.*

7 (Translation of Exhibit "A" to Complaint.)

Number 437.

Don Emilio Montilla y Valdespino and Don Pablo Van Syckel.

Contract of Lease.

Number Four Hundred and Thirty-seven.

In the City of San Juan Bautista of Porto Rico on the twenty-third of June, One Thousand Eight Hundred and Ninety seven, before me, Mauricio Guerra Mondragón y Mejías, Notarial deacon of the illustrious territorial college of the province, with residence and office open in the house Number 45 Fortaleza Street and witnesses which I shall name, appear:

1. Emilio Montilla y Valdespino, married, of age, resident of this Capital and property owner with his personal coupon of the fifth class, stub number 3346.

2. Paul Van Syckel y Paul who is a native of Pennsylvania, U. S. A. married, manufacturer and resident of Bayamón, with passport dated December 29, 1895, which he exhibits and whom I know.

They have in my judgment the necessary legal capacity to make the present contract of lease and assuring me that they are in the full exercise of their civil rights, without my knowing anything to the contrary, they declare as follows:

1. That the former has inscribed in the Registry of Property of this district on the back of page one hundred fourteen of the second volume of Bayamón by right of purchase made from his mother Doña Juana Valdespino Bey, the title of ownership of the farm described as follows:

"The farm named Santa Cruz situated in the ward of Juan Sanchez, municipal district of Bayamón, composed of an area of three hundred fourteen cuerdas of land equivalent to one hundred and thirteen hectares, forty-one areas and forty-six centiareas; bounded on the East by the farm "Caridad" which belonged to José Esteban Berriós, the Bayamón river, separating them, on the North by the farm Santa Barbara of Miguel Lopez, on the west by the town and the lands of Don Juan Basilio Nuñez and on the South by the Isleta of said Juan Basilio Nuñez."

2. That they have agreed upon the leasing or rental of said farm to the second named party for the amount, terms and period of time which will be hereinafter stated. Emilio Montilla y Valdespino carrying it into effect by means of this public document, stipulates.

First. That he leases the above described farm to Paul Van Syckel with the deduction of thirty-five cuerdas which he has rented prior to this contract to Don Rafael G. del Arroyo, resident of Bayamón which are situated at the northern part of the farm on the road leading out of the town.

Second. The lessee Mr. Van Syckel formally agrees to pay to the owner by way of rental the amount of one hundred and five pesos, provincial money, which will be paid monthly without excuse, pretext or discount whatsoever, at the end of each month beginning with the first of July next.

Third. Mr. Arroyo having acquired by purchase from the rentor Mr. Montilla, twenty-five hundred weight of tobacco which are stored in one of the rooms of the factories of the rented farm, Mr. Van Syckel will allow Mr. Arroyo the provisional use of said room until he disposes of said product.

Fifth. The lessee may use the factories of the farm to store in them all crops which the rented farm may produce by its cultivation, exception being made of sugar cane.

Sixth. As Mr. Van Syckel pays a monthly rental in order to make every possible use of the farm, he is authorized to sell the products fire wood, native timber, gravel and anything else which will not relound to the detriment of the farm.

Seventh. As this contract has no fixed term or duration it is a distinct condition that as long as Mr. Van Syckel fulfils the payment of the monthly rental Mr. Montilla is obliged to respect this contract without right to rent to other person or to sell, while it is rented, under penalty of payment of indemnity to the lessee, Mr. Van Syckel for the damages and losses which may be caused him.

Eighth. It is an express and decisive condition that the lessee may not give up the farm he has under lease without giving two months' notice previously to the owner Mr. Montilla.

Under which conditions the parties appearing formulate the present contract, to the carrying out of which they therefore are bound.

I the notary advised the parties of the necessity of presenting within the period of thirty days from date the first copy of this document in the office of the collector of royal taxes and transfers of properties to pay to the royal treasury what is due upon this contract under penalty of the fines which are designated by that department for delinquents.

Thus they declare, execute and sign with the witnesses residents of age being present, without legal challenge, whom I know, Don Pedro de Aldrey and Don Ricardo Morales, after the reading which they made of this document the contents of which I certify to,

(Signed)

EMILIO MONTILLA.
PAUL VAN SYCKEL.

PEDRO DE ALDREY.
RICARDO MORALES.

(Signed)

MAURICIO GUERRA.

Hermínio Diaz Navarro, Lawyer and Notary, with Location, Residence, and Office No. 12 San Justo Street.

I certify that the preceeding copy agrees well and truly with the original in contents found in the Protocol of the Notary Don Mauricio Guerra, today in my charge as general keeper of the records of the Notarial district of San Juan.

Consequently and at the request of Mrs. Van Syckel, I issue the present copy attaching the corresponding internal revenue stamp of fifty cents without comment and stamping and signing in San Juan, P. R. Fifth day of February, 1907.

[SEAL.]

(Signed)

HERMINIO DIAZ,

Stamp.

Archivero General.

(Translation of Exhibit "B" for Complaint.)

Number 910.

Paul Van Syckel in Notarial Document Fixing Term of Duration to a Contract.

Number Nine Hundred Ten.

In the city of San Juan Bautista of Porto Rico, on the 21st day of the month of October, 1899.—

Before me Mauricio Guerra Mondragón y Mejías, resident, Notary of the territorial college of this island with residence and office open at No. 45 Fortaleza St., appears Mr. Paul Van Syckel y Paul, of age, married, manufacturer, resident of Bayamón.

As to his acquaintance, profession and residence I certify as also to the fact that he has the free management of his property, full exercise of his civil rights and the necessary legal capacity for the present agreement.

He says, that upon the 23rd day of June, 1897, and by document made before the present Notary, he made a contract of lease of the farm named Santa Cruz, situated in the municipal district of Bayamón, ward of Juan Sánchez, with the owner thereof, Don Emilio Montilla, in which contract of lease the duration of the contract was not fixed, it being left to the will of the orator, that he can continue the lease of this property as long as he may desire, providing he pay with punctuality the stipulated rental of one hundred and five pesos current provincial money; and desiring today to secure in efficient form and to guarantee the rights which he acquired by means of that contract of lease, its term of duration being at the option of the orator by the present document he agrees that he binds himself to the continuance of said contract and the fulfilment of the obligations which he undertook in the same, for a period of more than six years, which will begin to run from the date of its execution, without that it be understood that he renounces the right which the said contract gives him to continue in the rental of the property, when the six years may expire, providing always that he continue paying the stipulated rental and fulfilling the other conditions which he undertook in said contract.

Thus he declares, agrees and signs after full reading which he himself made and ratifies, and I the Notary seal and sign certifying to all.

(Signed)

(Signed)

P. VAN SYCKEL.
MAURICIO GUERRA.

- 10 Herminio Diaz Navarro, Lawyer and Notary, with Location, Residence, and Office at No. 12 San Justo Street.

I certify that the preceding copy agrees well and truly with the original in contents found in the Protocol of the Notary Don Mauricio Guerra, today in my charge as general keeper of the records of the Notarial district of San Juan.

Consequently and at the request of Mrs. Van Syckel I issue the present copy attaching the corresponding internal revenue stamp of fifty cents without comment and stamping and signing in San Juan, P. R. Fifth day of February, 1907.

[SEAL.]

(Stamp.)

(Signed)

HERMINIO DIAZ,

Archivero General.

(Translation of Exhibit "C" to Complaint.)

Number Three Hundred and Sixty-eight.

Partnership Agreement of P. Van Syckel and Company.

In the city of San Juan Porto Rico on the first day of June 1900 before me Santiago Rosendo Palmer Trizarry, Notary of the college of Porto Rico and of this vicinity with residence on the main floor of No. 23 Fortaleza Street corner of Cruz, appear, on the one hand Mr. Paul Van Syckel, of age, married, mechanical engineer, and resident of Bayamón and on the other hand, Mr. Miguel Luis Arzuaga y Gayaralde, of age, single, merchant and resident of this city; in his capacity as managing partner of the mercantile house of this place named Sobrinos de Ezquiaga, organized under agreement of the 26th of January 1894 before the Notary Don José Agustín de la Torre y Fremaint, inscribed in the mercantile registry in provisional volume ten, page hundred and fifty-eight, leaf number five hundred and sixteen, first inscription.

They have in my judgment the necessary legal capacity, which they assure me is not in any way limited, to draw up the present agreement of partnership, and they say:

First, That Mr. Paul Van Syckel is owner of the following farm, situated in the ward of Sabana Seca of the district of Toa Baja containing an area, according to the Registry of Property of this city, of two hundred and seven cuerdas forty-three hundredths of land, equal to eighty-nine hectares, fifty-three areas and fifty one centiarens, bounding on the east north and west with the lands of the Señora Gonzalez y Beltrán, and on the south with those of Don Antonio Monroig.

Title.—That said farm was acquired by purchase from Doña Carmen Gonzalez y Beltrán according to document of the 21st of December, 1899, executed before the Notary Don Mauricio Guerra Mondragón y Mejía, inscribed in the Registry of Property on page two hundred and forty-one volume third of Toa Baja, farm number one hundred and fifty-five, first inscription.

11 Value.—That according to said title the above described farm has a value of four thousand one hundred and forty-eight pesos, special money of Porto Rico, known as provincial.

Lien.—That also as appears from the above mentioned title, said farm is free from all liens and mortgages.

Mortgage Credit.—Of eleven thousand six hundred ninety-seven pesos sixty-five cents, current special money of Porto Rico, upon the cane estate named Santa Cruz situated in the ward of Juan Sanchez of the Municipality of Bayamón, according to the Registry of Property of this city, of an area of three hundred and fourteen cuerdas of land, equal to one hundred and thirteen hectares, forty-one aras and forty-six centiares, which is bounded on the East by the estate Caridad, which belonged to Don José E. Berrios, the Bayamón river separating it therefrom, on the North by the estate Santa Barbara of Don Miguel Lopez on the West by the town and lands of Don Juan Basilio Nuñez and on the South by said Mr. Nuñez.

Origin.—That the debtor of said mortgage credit is Don Emilio Montilla y Valdespino and it arises from a transfer made him by Don José Eleuterio Marxuach y Echevarría in agreement before me on the 16th of March of the current year, inscribed in the Registry of Property on page fifty-seven back, volume 19 of Bayamón, farm 79, triplicate, fifteenth inscription.

Value.—That the said credit although of the value above stated, has for the purposes of this instrument and without prejudice to the interest which may accrue, a value of eleven thousand seven hundred and twenty four pesos and seventy-seven cents current money of Porto Rico.

Lien.—That also this is free from all obligation and lien.

Cattle.—Eleven thousand one hundred and eighteen pesos current money, in value of stock of cattle as shown by inventory made and which will be subtended hereto.

Chattels.—One thousand eight hundred and ninety seven pesos, ninety one cents of said money as also appears from inventory in which said chattels are listed.

Money.—One thousand one hundred and eleven pesos and thirty-two cents also of provincial money, consequently all the above mentioned gives the following:

Résumé.

Amount of cattle as per inventory, eleven thousand one hundred and eighteen pesos.	\$11,118.00
Value of chattels, one thousand eight hundred and ninety-seven pesos ninety-one cents.	1,897.91
Value of mortgages described upon the estate Santa Cruz, eleven thousand seven hundred and twenty-four pesos and seventy-seven cents.	11,724.77
Value of the farm described Sabana Seca, four thousand one hundred and forty-eight pesos.	4,148.00
Amount of cash one thousand one hundred and eleven pesos and thirty-two cents.	1,111.32

Which amounts make a total of thirty thousand pesos \$30,000.00

12 Division of the capital.—Second. That with the capital above listed Mr. Van Syckel agreed with Messrs. Sobrinos de Ezquiaga to form a general partnership for the purpose of entering into the business of da-rying and the purchase of cattle, the above described property becoming common to both partners in the proportion of fifteen thousand pesos for Mr. Van Syckel and fifteen thousand pesos for Messrs. Sobrinos de Ezquiaga, the latter having paid to the former that amount in cash to the end that the contracting parties become equal owners of the property of the inventory mentioned in the previous clause, which is hereby accepted.

Name.—Third. The partnership will transact business under the firm name of P. Van Syckle y Compania, both partners having power of administration and management indistinctively, and in the case of the absence of Mr. Van Syckel both partners together will name a confidential person who will be in charge of the farm as an employee of the partnership.

Duration.—Fourth. The duration of the partnership will be for two years expiring on the 31st of May, 1902, the dissolution being possible before that time by agreement for convenience of both parties or disagreement in the progress of the business, or any other cause. Continuation may also be agreed upon for two years or the time which may be convenient.

Profits or Losses.—Fifth. The profits or losses which may result from this business will be distributed equally between the parties.

Balances.—Sixth. Every three months a balance will be struck and the money profits which result will be credited in equal parts to each partner, and if so agreed the profits may be turned back into the business for the purpose of its increase.

Monthly Inventory.—Seventh. The partner Van Syckel is obliged to deliver Messrs. Sobrinos de Ezquiaga monthly an inventory of all the cattle on hand.

Messrs. Sobrinos de Ezquiaga in their turn are obliged to deliver to Mr. Van Syckel a statement of the profits and losses which result from the business each month.

Prohibition.—Eighth. The partners are prohibited from the disposing of the cattle on hand and property of the partnership without previous agreement and approval of both parties.

Nor can the partnership withdraw more than the profits in money which the dairy business may produce.

Increase of Capital.—Ninth. If both parties agree later on to give greater impulse to the business the capital may be increased for the same business as also for the purchase of land.

Declaration.—Tenth. As in the inventoried capital there exists a credit owed by Mr. Emilio Montilla y Caldespino, if this gentleman shall desire to pay that amount and its interest to the date of payment, which passes by virtue of this document to the partnership hereby constituted, its cancellation will be had and the amount will be credited to the capital account of each partner.

Death.—Eleventh. In case of the death of the partner Van Syckel before the expiration of the term of this contract the heirs in accord

with Messrs. Sobrinos de Ezquiaga will decide whether liquidation be had or the partnership be continued.

13 Differences.—Twelfth. Whatever difference may arise between the partners will be submitted to friends named by each party, and in case of disagreement these will elect a third by chance to whom decision will be left, the parties binding themselves to accept their determination as an executive sentence without further claim.

Explanation.—Thirteenth. If later on the debtor of the mortgage referred to in this document shall desire to take it up, this partnership will be obliged to cede it to him without opposition, consequently being paid the amount of principal and interest to date of transfer the amount resulting will be paid to the capital stock of each partner.

In which terms this partnership is formed the faithful carrying out of whose clauses is obligatory.

The Notary call the attention to the fact that this instrument should be inscribed in the Registry of Property of this city without which requisite it will not be admissible in any Court, Council or Office of the Government except in the case excepted in the article three hundred and eighty-nine of the Mortgage Law.

Execution.—Thus they execute and sign with the witnesses of the instrument, residents of this city, Don Gerónimo Carreras and Don Salvador Bugella, after reading which was made and knowing their right to read it personally which they did.

To the acquaintance, profession and residence of the agreeing parties and to all other contents of the present instrument I the Notary certify.

P. VAN SYCKEL
SOBRINOS DE EZQUIAGA.
SALVADOR BUGELLA.
GERONIMO CARRERAS
SANTIAGO R. PALMER.

(Signed)

General Inventory of the Stock of P. Van Syckel and Company.

Cattle.

131 cows at \$50 each.....	\$6,550.00
106 heifers and steers at \$28 each.....	2,968.00
11 oxen for work at \$50.....	550.00
9 horses at \$60 each.....	540.00
6 mares at \$50 each.....	300.00
15 calves at \$10.00 each.....	150.00
3 colts at \$20.00 each.....	60.00
Total.....	\$11,118.00

Chattels.

One milk deposit with all accessories, jars, bottles, etc.,	\$1,052.00
2 carts at \$65 each.....	130.00
3 carts at \$40 ".....	120.00
4 wagons for carrying milk at \$53.75 each.....	215.00
22 Gals. of liquid for cleaning jars \$75.59 gold c.m....	125.98
Invoice of wheels axles springs, locks of brass.....	254.93
Total	\$1,897.91

11

Mortgage.

Value of mortgage over the estate Santa Cruz.....	\$11,724.77
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Farms.

Value of farm Sabana Seca purchase from Geigel....	\$4,148.00
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Résumé.

Value of cattle as per inventory.....	\$11,118.00
Value of chattels ".....	1,897.91
Value of mortgage Santa Cruz.....	11,724.77
Value of Farm Sabana Seca.....	4,148.00
Value of Working capital.....	1,111.32
Total	\$30,000.00

(Signed)

SOBRINOS DE EZQUIAGA,
P. VAN SYCKEL.

This is the first copy in accord with the original and the inventory attached as shown in my current protocol. And it is issued for Mr. P. Van Syckel upon five pages of my official paper as there is none of the Notarial College in San Juan (Porto Rico) on the twentieth day of the month and year of its execution. Correction—more—Van Syckel—are recognized.

SANTIAGO R. PALMER.

(Translation of Exhibit "D" to Complaint.)

Continuation of Partnership.

Number Eighteen.

Extension of Partnership.

In the City of San Juan Bautista of Porto Rico on the 26th of May 1902, before me, Eduardo Aenña Aybar, Lawyer, Notary Public of the Colleges of the Island, with residence and office open

in Luna Street Number 88, appear, on the one hand, Mr. Paul Van Syckel, of age, married, mechanical engineer, and resident of Bayamon, and on the other hand Mr. Nicasio Arsuaga y Gayaralde, of age, single, merchant and resident of this city in his capacity of managing partner of the business house of this place named *Sobrinos de Ezquiaga*, organized under document of the 2nd of January of the current year, executed before the Notary Mr. Santiago R. Palmer, and inscribed in the Mercantile Registry of this City on page two hundred and seventeen of volume nineteen of partnership number one thousand and nine, first inscription.

15 The parties appearing assure me that they are in the full exercise of their civil rights and they have in my judgment the necessary legal capacity to make the present agreement of continuation of partnership. They say:

First. That on the first of June 1900 and by document executed before the Notary of this city Mr. Santiago R. Palmer, Paul van Syckel in his own right and Miguel Luis Arsuaga y Gayaralde as manager of the partnership *Sobrinos de Ezquiaga*, formed under the name of P. Van Syckel and Co., a general partnership with residence in this city with the object of engaging in the milk business and the purchase of cattle.

Second Said partnership was formed with a capital of thirty thousand dollars, supplied by both parties in the proportion of fifteen thousand dollars by Mr. Paul Van Syckel and fifteen thousand by the *Sobrinos de Ezquiaga*, who paid the former in cash, to the end that the property listed in the inventory of property of Mr. Van Syckel should become common to both parties and in the proportion indicated of half for each one.

Third. That by clause fourth of the agreement of reference which is at hand in this act and which I return to the parties with note expressive of the same, the time of two years was fixed as the term of duration of the aforesaid partnership, optional right being established therein of the parties to continue or dissolve it upon its expiration for two years more or the time which they might think convenient.

Fourth. As the term of duration of the above mentioned partnership will expire on the 31st. of the month in course, the parties in view of the good results of the business have agreed to continue it for the term and in the form following.

Fifth. That although in the copartnership agreement of P. Van Syckel and Co., appears as capital of same, a mortgage credit over the estate Santa Cruz, which was owing by Mr. Emilio Montilla y Valdespino acquired by Mr. Paul Van Syckel by transfer made him by Mr. Eleuterio Marxuach y Echevarria, in document of the sixteenth of March of 1900, before the Notary Palmer, it is now made evident by the parties that said credit has been duly cancelled, the farm Santo Cruz having been adjudicated in payment thereof by decision of the District Court of this city, on the 27th of November, 1901, dictated in the case carried on by the partnership P. Van Syckel and Co., against Mr. Emilio Montilla y Valdespino in collec-

tion of said mortgage credit of eleven thousand seven hundred and twenty four pesos and seventy-seven cents, the said farm becoming a part of the capital of the partnership, which in virtue of the measurement practiced by Mr. A. Camilo Gonzalez, is described in the following form.

County estate, named Santa Cruz, situated in the ward of Juan Sanchez, municipal district of Bayamón, composed of three hundred and twenty three cuerdas two hundred and eighteen varas, nine hundred and twenty three hundredths, equal to one hundred and twenty six hectares, ninety seven areas, two hundred and twenty one thousandths, bounded on the North by the river Bayamón which separates

it from the estate Santa Barbara of Miguel Lopez and from the estate Caridad, of Rafael Copino and by the lands of the estate San Antonio belonging to Osvaldo Abril; on the South by the lands of the farm named Isleta of Ysabel Nuñez; on the East by the lands of the said Santa Barbara from which it is separated in part by the old river bed and in other part by the present river bed, with lands of the estate Caridad of Mr. Copino, from which it is separated also in the same way and by lands of the estate San Antonio; and on the West by the Bayamón river and the estate Santa Bárbara and on its other margin by the lands of José de Jesús Posquera and those of Ysabel Nuñez; thereon are two houses, one of native and imported lumber with galvanized iron roof; and the other masonry which was formerly used as a sugar factory; a wooden shed covered with iron used for a dairy and a small mill for grinding cane, this last in a ruined condition.

Sixth. That the title of adjudication of the estate Santa Cruz, recited in the previous clause was taken to the Registry of Property of the district, being the object of inscription twenty, of farm number seventy nine quadruplicate found in folio two hundred thirty-nine of volume twenty of Bayamón.

Seventh. That notwithstanding that set down on the above mentioned 27th of November of 1901, the adjudication of said farm was had for the sum of eight thousand seven hundred dollars, amount to two thirds parts of the valuation given it in the contract of mortgage loan made between Messrs. Montilla and Marxuach, the parties assign for the present to the farm for the purposes of this present contract, a value the same as represented by the mortgage credits brought to the partnership by Mr. Van Syckel or be it eleven thousand six hundred and ninety seven pesos and seventy five cents provisional money, not yet being liquidated the total amount of the charges against the farm to which the parties to whom it was adjudicated must respond, nor the costs of the suit, they cannot place any value thereon in accordance with its costs of acquisition to determine whether there was profit or loss to the partnership in it; reserving the right to make this operation when the time of definite liquidation arrives or when it may be convenient.

Eighth. Therefore the parties appearing and carrying into effect what was agreed under the bases heretofore expressed, agree:

That the said partnership P. Van Syckel and Co. is hereby continued for four years more, to begin to count from the first day of

the month of June coming and the present year, continuing in its business and operations under the same clauses and conditions set out in the agreement of organization reviewed in the first part of this present document without making any other alterations whatsoever which might modify its context and without explanation other than that in clauses fifth, sixth and seventh of this instrument, to which they bind themselves.

Thus the parties appearing agreed, I the notary calling their attention to the fact that a copy of this agreement should be taken to the Mercantile Registry and the Registry of Property of this district, for its inscription without which requisites it will not have any value or be admitted in any court or office of the government in accordance with the terms of the present Commercial Code.

The witnesses are Mr. Pedro de Elzaburu y Vizcarrendo and Mr. Mariano Acosta Quintero, of age, residents of this city and without legal hindrance.

Having read this document to the parties and witnesses as they renounced their right which I told them they had to read it personally they affirm, ratify and sign with said witnesses.

To all of which acquaintance of the parties, profession and residence I the notary certify.

(Signed)

P. VAN SYCKEL.
N. ARSUAGA.

PEDRO DE ELZABURU.
MARIANO ACOSTA.

EDUARDO ACUSA.
Lawyer and Notary.

In accordance with the original which under the number eighteen is found in the current protocol of my notarial office, having attached a stamp of one dollar internal revenue, I for Mr. Van Syckel issue this the first copy on four pages of paper of my office having also a fifty cent internal revenue stamp, signing and stamping it with my notarial stamp in San Juan, P. R. on the same date as its execution.

EDUARDO ACUSA.

(Translation of Exhibit "E" for Complaint.)

Number 438.

The Partnership P. Van Syckel and Company and Paul Van Syckel,
Regarding Postponement of Right.

Number Four Hundred Thirty-eight.

In the city of San Juan, Capital of Porto Rico, on the 27th of July 1901, before me, Santiago R. Palmer, Notary of the College of Porto Rico with location and residence in the city and office on the main floor of the house number 23 Allen Street, appear on the one

hand the industrial copartnership "P. Van Syckel and Company" and in its name and representation Don Miguel Luis Arzuaga y Gayaralde, of age, single merchant, resident of this city,—said representation resulting from the fact that he is manager of the mercantile copartnership "Sobrinos de Ezquiaga" having residence in this city, which in its turn is a partner of the above named P. Van Syckel and Co., with power of management and administration of the same; and the first fact is evident from the contract of organization of the copartnership, Sobrinos de Ezquiaga, executed in this city before the Notary Don José Agustín Torre y Fermaint on the 26th of January 1894, and the second fact from the contract of organization of the copartnership of P. Van Syckel and Co., executed before me on the 1st of June 1900.

On the other hand appears Mr. Paul Van Syckel, of age, married, mechanical engineer, resident of Bayamón.

The parties appearing have in my judgment the necessary legal capacity to make an agreement postponing a real right of mortgage to another of lease and Don Miguel Luis Arzuaga y Gayaralde in the representation which he shows says—

First. That the copartnership P. Van Syckel and Co., is owner of three mortgage credits which amount to eleven thousand pesos, Mexican money, owed by Don Emilio Montilla y Valdespino and said credits are:

1. One of four thousand pesos, of principal and interest at ten per cent per annum, falling due on the 18th day of August 1895.

2. Another of three thousand pesos principal and interest at one per cent per month, falling due on the 15th day of March, 1897.

3. And another of four thousand pesos principal and interest at one per cent per month, falling due also on the 15th day of March, 1897.

These credits are guaranteed by mortgages made by Mr. Emilio Montilla y Valdespino over a farm or sugar estate named Santa Cruz, which is situated in the ward of Juan Sanchez, municipal district of Bayamón. Registry of property of this City: it contains an area of three hundred fourteen cuerdas of land, equal to one hundred thirteen hectares, forty-one areas and forty-six centiareas, and is bounded on the East by the farm Caridad which belonged to Don José Escolástico Berrios, being separated therefrom by the Bayamón River, on the North by the farm Santa Barbara of Don Miguel Lopez and on the West by the town and the lands of Juan Basilio Nuñez and on the South by the 1-leta of said Juan Basilio Nuñez.

These credits arise from contracts of loans with voluntary mortgages made between the said Emilio Montilla y Valdespino and José Eleuterio Marxuach y Echevarria by documents of the 19th of August 1892 before the notary of this city Juan Ramón de Torre de Ramos, of the 28th of March and the 9th of August of 1894 before the notary of this city José Agustín de la Torre y Fermaint, inscribed in the Registry of Property of this city on the back of folio 116 of Volume 2 of Bayamón and pages 156 and 157 of Volume 11 of the same municipality property number 79, inscription ninth, tenth and eleventh.

Second. That the credits and real rights of mortgage named, Jose Eleuterio Marxnach y Echevarria ceded and transferred in favor of Paul Van Syckel, in accordance with document executed before me on the 16th of March 1900, inscribed in the Registry of Property of this city on the back of page 57, volume 19 of Bayamon, property number 79 triplicate, inscription 15th, and all the rights belong today to the partnership of P. Van Syckel, resulting from documents constituting the same executed before me on the first of June 1900, under number 378.

19 Third. That the party appearing Mr. Paul Van Syckel is lessee of the farm or estate Santa Cruz as described, in as far as refers to two hundred seventy-nine cuerdas of the same for the rental of one hundred and five pesos, provincial money, payable monthly and with terms and conditions of agreement of lease which he has made with Don Emilio Montilla y Valdespino by document of the 23rd of June 1897, executed before the Notary of this city Don Mauricio Guerra Mondragon y Mejias and inscribed in the Registry of Property of the same on the back of page 158 value II of Bayamon, property number 79 duplicate, inscription 14th.

Fourth. And the industrial partnership P. Van Syckel and Co., represented by its managers Sobrinos de Esquiaga and for and in its name Don Miguel Luis Arzuaga y Gavaralde agrees:

That all and whatever rights of preference, the real rights of mortgage of which review has been made, constituted over the estate Santa Cruz described, have or may have for all cases, including that of judicial claim, all these they postpone to the real right of lease mentioned in favor of Mr. Paul Van Syckel and his (causa habientes) renouncing the right which they might have to ask for the rescision of said lease.

Mr. Paul Van Syckel on his part says that he accepts this document in all its parts.

I the Notary advise the parties that this document should be inscribed in the Registry of Property of this city so that it may prejudice third parties and in its prejudice be admissible in the Courts, councils and office of the government when it does not treat of the two cases excepted by Art. 389 of the Mortgage Law.

Thus the parties appearing agree before me and the witnesses of the instrument, which are residents of this City, Antonio E. Fernandez and Geronimo Carreras.

I read the present document to the consenting parties and witnesses; I told them that they have the right to read it personally. They say that they thoroughly understand its contents and at the same time the agreeing parties ratify and sign with the witnesses; to which I the notary certify and that I know the parties their professions and residence and all other matters which I affirm and make reference to in this instrument, which I attest on the present three sheets of my official paper.

(Signed)

SOBRINOS DE ESQUIAGA,
P. VAN SYCKEL.

ANTONIO E. FERNANDEZ
GERONIMO CARRERAS.

(Signed)

SANTIAGO R. PALMER.

Hermínio Dias Navarro, Lawyer and Notary, With Location, Residence, and Office at No. 12, San Justo Street.

I certify that the preceding copy agrees well and truly with the original in contents found in the Protocol of the Notary Don Santiago R. Palmer, today in my charge as general keeper of the records of the Notarial district of San Juan.

20 Consequently and at the request of Mrs. Van Syckel I issue the present copy attaching the corresponding internal revenue stamp of fifty cents without content and stamping and signing in San Juan, P. R. Fifth day of February 1907.

[SEAL.]

(Signed)

HERMINIO DIAZ.

Stamp.

Archivero General.

(Translation of Exhibit "F" to Complaint.)

Formation of the Agricultural Partnership, "The Santa Cruz Sugar Company."

In the city of San Juan, Porto Rico on the 22nd of August 1905, We, Juan José Arzuaga y Beraza, of age, single, merchant and resident of this city and Mr. Paul English, also of age, single, industrial and of the same community: the former Mr. Arzuaga representing the partnership "P. Van Syckel & Co., in accordance with detail hereinafter expressed and Mr. English in his own right.

In virtue of the present document, to which we admit equal force and effect as if it were a public document, we make the contract of organization of the private partnership, which we celebrate under agreements and stipulations contained in the following clauses:

First. The partnership has for its object the planting, cultivation and developing of sugar cane in the farm "Santa Cruz" located in the ward of Juan Sanchez, municipal district of Bayamón and composed of three hundred fourteen cuerdas of land more or less, today belonging to P. Van Syckel and Co., as also in whatever other farm or farms the partnership may rent in future if it be agreeable.

Second. The partnership is constituted under the firm name "The Santa Cruz Sugar Co.;" the only members being as aforesaid, the undersigned Paul English and the industrial P. Van Syckel & Co., organized in document of the first of June 1900, before the notary of this city Don Santiago R. Palmer, and continued by another document of the 26th. of May 1902, before the Notary of this city Don Eduardo Acuña Aybar, with expiration fixed for the 1st of June, 1906.

Third. The residence of the partnership is fixed in the city of San Juan for all legal purposes.

Fourth. The capital of the partnership is fixed at the sum of Ten Thousand Dollars (\$10,000) which both of the partners invest in the following proportion: P. Van Syckel & Co., Eight Thousand Five Hundred Dollars (\$8,500.00) representing therefore eighty-five per cent (85%) of the capital; and Paul English One Thousand

Five Hundred Dollars (1500.00) which represents therefor fifteen percent (15%) the balance of said capital.

Fifth. The term of duration of the partnership as it is subordinate to that of P. Van Syckel & Co., will continue to the aforesaid 1st of June 1903. If upon the arrival of that date said partnership be continued the present one may also be continued if so agreed and 21 for the same or a shorter period than that one as agreed; it being understood for greater clearness that the continuation of the partnership after said first day of June 1903 is purely optional with the parties.

Sixth. The management and administration of Santa Cruz Sugar Co. will be in charge of the managers of P. Van Syckel & Co. indistinctively; that is to say Sobrinos de Ezquiaga and Paul Van Syckel or the person which one and the other by mutual agreement may designate as such managers by power of attorney constituted in public document. By reason of this the partners of P. Van Syckel & Co., as such managers of the Santa Cruz Sugar Co. or the attorney in his case will have the right and full power to carry into effect all kinds of partnership agreements, either one of the partners or the attorney which may be named being able to draw up whatever public or private agreement may be necessary without limitation other than that they may not sell the stock present or future of the partnership or its products, or in any way encumber them without previous agreement of both partners of P. Van Syckel & Co., or whoever legally represents them.

Seventh. P. Van Syckel & Co. make known that they have made a contract with Don Manuel Sosa y Oliva for the administration of the farm Santa Cruz under clauses and stipulations of document of 6th of October 1901 and additional act of same on the 5th of January 1903, and that the advantage or disadvantages which result from the contract, will be respected in all its parts, by the Santa Cruz Sugar Co.

Tenth. The accounting of the partnership and whatever else is related thereto will be in charge of the managers of P. Van Syckel & Co. who will be obliged to produce a monthly account including all the expenditures which arise from the farm based upon the account of the manager and also from the crops thereon and produced from the sale of products; all this in terms which allow of the formation of an exact idea of the progress of the business.

Eleventh. In case of the death of the partner Mr. Paul English during the period of this partnership, his heirs in accordance with P. Van Syckel & Co., will decide if the liquidation of the partnership shall be carried into effect or it be continued.

Twelfth. Whatever difference may arise between the partners will be submitted to arbitrators selected one by each party and in case of disagreement a third selected by chance, the contracting parties finding themselves to submit to the decision which these may reach without right to other claim.

Thirteenth. At the end of each crop a balance and inventory will be made and the partners will agree upon the sum which they deem it expedient to divide, leaving a sufficient balance to cover the needs

of the partnership until the beginning of the following crop; dividing the profits or losses in proportion to the capital invested.

Fourteenth. The Santa Cruz Sugar Co., binds itself on its part to preserve the farm in good condition giving it the necessary cultivation and treating it at all times as if it were its own property.

22 Such is the contract which we drew up in common accord and to the fulfillment of which we bind ourselves, it being made in the city of San Juan Porto Rico at the date above mentioned.

(Signed) P. VAN SYCKEL & CO.,
By JUAN J. ARSUAGA.

The preceding document signed before me today the 22nda day of August, 1905,

(Signed) EDUARDO ACUÑA.

Amendment to Bill of Complaint.

(Filed May 29, 1907.)

ADA ELMIRA HIRST VAN SYCKEL ET AL.

VS.

SORRINOS DE EZQUIAGA ET AL.

Bill to Wind up Partnership.

Come now the complainants and, by order of the court, amend their original bill of complaint, herein in the following particular to wit: by inserting in the second paragraph of said bill of complaint on the first page thereof, after the phrase "and these complainants are his heirs at law," the following words:

"as is more fully shown and proven by the judicial declaration of such heirship decree by the Insular District Court for the Judicial District of San Juan on the 3rd day of April, 1907, a certified copy of which is hereto attached as an exhibit, and prayed to be taken as a part hereof;"

PETTINGILL AND LEAKE,

Solicitors for Complainants.

Isla de Puerto Rico, Distrito Judicial de San Juan, en la Corte de Distrito, Civil No. 1389-55.

EX PARTE ANA ELMIRA HIRST DE VAN SYCKEL.

Declaratoria de Herederos de Paul Van Syckel.

El día veinte y seis de Marzo de 1907 compareció la promovente en este caso, por medio de sus abogados N. B. K. Pettingill y R. H. Todd, y presentó la solicitud debidamente jurada y acompañada de

documentos creditivos del fallecimiento de Paul Van Syckel, de su matrimonio con la promovente y del nacimiento de sus cinco hijos. La Corte dió por presentada la solicitud con la prueba documental acompañada y para oír la prueba testifical señaló el día 3 de Abril de 1907.

Y hoy 3 de Abril de 1907 compareció en persona y por sus abogados, la promovente, y se practicó la prueba testifical; y la Corte habiendo considerado la solicitud y las pruebas y de acuerdo con la ley, resuelve que debe declarar como declara herederos abintestatos de Paul Van Syckel, que falleció en la Habana, Cuba, el 27 de Diciembre de 1905, sin otorgar testamento y dejando la mayor parte de sus bienes en esta Isla, dentro de este Distrito Judicial, á sus legítimos hijos nombrados Margarita Ethel, Bárbara Paul, William Henry, John Archibald y Alma Louise, habidos en su matrimonio con la promovente Ana Elmira Hirst de Van Syckel, y á esta en la cuota en usufructo que el Código Civil determina.

Dictada en Corte abierta hoy 3 de Abril de 1907.

Registrada hoy 3 de Abril de 1907.

Firmado: EMILIO DEL TORO,

Juez Sec. 2da.

Certifico:

JOSÉ E. FIGUERAS, *Secretario*.

Yo, José E. Figueras, Secretario de la Corte Distrito del Distrito Judicial de San Juan, P. R., Certifico: que lo que antecede es una copia verdadera y correcta de la resolución dictada por la Sección segunda de esta Corte, en el caso antes expresado, y a solicitud de parte interesada y para que lo haga constar donde convenga, libro la presente en San Juan, P. R. á 10 de Abril de 1907 con mi firma y sello de la Corte.

[SEAL OF COURT.]

JOSÉ E. FIGUERAS,

Secretario de la Corte de Distrito de San Juan.

Answer and Cross-bill of Defendants Sobrinos de Ezquiaga.

(Filed June 14, 1907.)

ADA ELMIRA HIRST VAN SYCKEL et al.

vs.

SOBRINOS DE EZQUIAGA et al.

Answer.

The Joint and Several Answer of Juan José Arsuaga, José B. Arsuaga, Pedro Arsuaga, and Nicasio Arsuaga, Composing the Mercantile Partnership Doing Business under the Firm Name and Style of Sobrinos De Ezquiaga, to the Bill of Complaint of Ada Elmira Hirst Van Syckel, Margarita Ethel, Barbara, Paul, William Henry, John Archibald, and Elmer Louise Van Syckel.

These defendants, respectively, now and at all times hereafter saving to themselves all and all manner of benefit of exception, or

otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the said Bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, severally, answering, say,

24

I.

Defendants admit that Complainants are citizens of the United States, and that Defendants are subjects of the King of Spain.

II.

Defendants further admit that Complainant Ada Elmira Hirst Van Syckel is the widow of Paul Van Syckel, who died on the twenty-seventh day of December, 1905, and that the other complainants are the legitimate children of the said Paul Van Syckel and of Complainant Ada Elmira Hirst Van Syckel, his widow. Defendants have no knowledge sufficient to affirm or deny that the said Paul Van Syckel died without leaving a will or testament, or that Complainant Ada Elmira Hirst Van Syckel has obtained letters of administration upon the estate of the said Paul Van Syckel from the Probate Court of Crawford County, State of Pennsylvania, or of any other Court, but as to these facts Defendants leave Complainants to the proof thereof.

III.

Defendants admit that on or before the twenty-third day of June 1897, Emilio Montilla y Valdepiño was the owner of the tract of land composed of 324 cuerdas situated in the jurisdiction of the Municipality of Bayamón and known by the name of "Santa Cruz," being the same property particularly described in the exhibits attached to the Bill of Complaint herein; that on the day and year last above mentioned Paul Van Syckel obtained from the said Montilla a lease of 279 cuerdas of said plantation "Santa Cruz" for an indeterminate period of time, to continue at the option of the said Paul Van Syckel as long as the stipulated rental of 105 pesos, Provincial Money, equivalent to \$63.00, Gold, per month, should be properly paid—all as set forth in the certified copy of said contract attached to the Bill of Complaint and marked Exhibit "A."

IV.

Defendants admit that previous to the making of said lease to the said Paul Van Syckel by the said Montilla y Valdespiño the latter had mortgaged all of the said plantation "Santa Cruz" to one José E. Marxuach to secure the sum of 11,000 pesos, Provincial Money. Defendants further admit that on the sixteenth day of March, 1900, the said Paul Van Syckel, being on said date the lessee, as aforesaid, of 279 cuerdas of the said Hacienda "Santa Cruz," secured by notarial instrument a due and proper assignment to him from the said José E. Marxuach of all of the rights of the latter as Mortgagee in

and to the whole of the said Hacienda "Santa Cruz" under the mortgage hereinabove referred to.

V.

Defendants admit that on the first day of June, 1900, they entered into a contract of partnership with the said Paul Van Syckel, under the provisions of the Commercial Code of Porto Rico of the class known as "Universal Civil Society" (Sociedad Civil Universal), for the purpose of dedicating themselves to the dairy business upon the said Hacienda "Santa Cruz" and the purchase of cattle; and by subsequent agreement they determined to devote the said property to the cultivation of sugar-cane.

The capital of the said partnership or society was 30,000 pesos, Provincial Money, of which Defendants, Sobrinos de Ezquiaga, contributed 15,000 pesos, Provincial Money, in cash, and the said Paul Van Syckel contributed the said mortgage upon the said Hacienda "Santa Cruz," which he had acquired by assignment from the said José E. Marxuach, as aforesaid, and the value of which was stated in the said Articles of Association to be 11,724.77 pesos, Provincial Money. The firm name adopted was P. Van Syckel and Company (P. Van Syckel y Compañía), and it was provided that the administration and management of the same should belong equally to Defendants, Sobrinos de Ezquiaga, and to the said Paul Van Syckel, and that in case of the absence of the said Paul Van Syckel both of the parties would designate a person to take charge of the Hacienda "Santa Cruz" for the cultivation of the same.

The period of said partnership was fixed at two (2) years, to expire on the thirty-first day of May, 1902, and the profits and losses were to be divided equally between the said Paul Van Syckel and Defendants, Sobrinos de Ezquiaga.

A certified and duly translated copy of the said Articles of Partnership is herewith attached and made a part of this Answer and is marked "Defendants' Exhibit No. 1."

VI.

Defendants state that soon after the formation of the partnership last above referred to Paul Van Syckel desired to depart from Porto Rico and to take up his permanent residence in the Republic of Cuba, where he was engaged in certain business enterprises. Thereupon he entrusted to Defendants Sobrinos de Ezquiaga, the entire management and control of all of his interests in Porto Rico, and particularly his share of the assets and property composing the capital of the said firm of P. Van Syckel & Company, and he gave to said Defendants, Sobrinos de Ezquiaga, full and ample authority to manage the business of the said partnership, and the assets thereof, in the manner in which they might deem best.

Defendants say that for many years prior to this time they had been the confidential agents of the said Paul Van Syckel personally, and of various companies represented by him in the Island of Porto Rico; that their relations were confidential and intimate, and that

each had the greatest confidence in the integrity and business capacity of the other.

VII.

Defendants say that it is true that Paul Van Syckel in and by the original Articles of Partnership herein above referred to did transfer and convey to P. Van Syckel & Company, as a part of his contribution to the assets of the said firm, the title to the tract of land known as "Plantaje" and referred to in the Bill of Complaint; and

26 Defendants say that by virtue of the powers conferred upon them in the said Articles of Association, and by the authority and consent of the said Paul Van Syckel, they have at all times been managing and cultivating with the greatest possible care the said estate "Plantaje" together with the Hacienda "Santa Cruz."

VIII.

Defendants say that it is true that on the twenty-second day of August, 1905, the said firm of P. Van Syckel & Company and Defendant Paul A. English formed or organized the firm known as the "Santa Cruz" Sugar Company for the purpose of developing and cultivating the said Hacienda "Santa Cruz" and to make it as productive as possible by the cultivation of sugar cane; and that in the said Santa Cruz Sugar Company Defendant Paul A. English had an interest equal to fifteen per cent (15%) of the capital, and that the firm of P. Van Syckel & Company had an interest of eighty-five per cent (85%) of the said capital.

IX.

Defendants say that after the death of the said Paul Van Syckel they retained the management of the said firm of P. Van Syckel & Company, and of its assets, in accordance with the authority conferred upon them by the original Articles of Association of the said firm and in accordance with the authority conferred upon them by the said Paul Van Syckel, as herein-above stated.

Defendants state that they have at all times rendered proper accounts to the said Paul Van Syckel in his life-time of the affairs of the said firm of P. Van Syckel & Company, and also of the accounts and affairs of the Santa Cruz Sugar Company; and that after the death of the said Paul Van Syckel Defendants have rendered to his widow true and faithful accounts of the affairs of the said partnership and have given to her all information desired or requested.

Defendants say that the allegations of the Bill of Complaint to the effect that they rendered accounts which were unintelligible to the said Paul Van Syckel, and subsequently to his widow, are untrue and made for the purpose of creating prejudice against Defendants and sympathy for Complainants.

X.

Defendants say that it is true that the firm of P. Van Syckel and Company and the firm of the Santa Cruz Sugar Company expired by

virtue of the Articles of Partnership in the month of June, 1906, but Defendants say that they have continued the management and control thereof in accordance with the laws of Porto Rico and for the purpose of liquidating the affairs of the said firm.

Defendants state that they are desirous and anxious to close up and liquidate the affairs of both of the said firms, to wit: P. Van Syckel and Company, and the Santa Cruz Sugar Company—and they pray the Court to make a liquidation and accounting of the assets and liabilities thereof.

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XI.

Defendants say that they have continued since the expiration of the said Articles of Partnership of both of the said firms to cultivate the crops growing on the properties belonging to or rented by the said firms, in order to realize upon the money invested therein prior to the expiration of the said Articles of Partnership; and Defendants say that so far as concerns the Hacienda "Santa Cruz" they are now able, because of the end of the cane crop for the year 1907, to render a full accounting and liquidation of the profits and expenses of the said property, and Defendants are also prepared to render a true and faithful accounting of the affairs of the estate "Plantaje."

But as to the said estate of "Plantaje" Defendants say that a large part thereof is cultivated in oranges and pine apples, and, that although the said plants are being carefully attended to, it will be a question of some years before such plants are productive.

Defendants say that the cultivation of oranges and pineapples upon the said estate "Plantaje" is being conducted in the best manner possible, under the directions of an employee elected by Complainant Ada Elvira Hirst, widow of Paul Van Syckel, and Defendants say that said Complainant, having no knowledge or experience in such matters and being badly advised by persons who have no knowledge or experience of such matters, seeks to harass and embarrass Defendants in the cultivation and management of the said estate "Plantaje"; but Defendants aver that the oranges and pineapples upon the said estate are being cultivated in the best manner possible; and Defendants say that the charges of mismanagement and incorrect returns made by Complainants are made in complete and gross ignorance of the facts.

XII.

Defendants are anxious and desirous that a general liquidation be made of the affairs and accounts of the said firm of P. Van Syckel & Company and the Santa Cruz Sugar Company, and that upon such liquidation and accounting a division or partition may be had of the properties, or, in the event of the inability to make such division or partition, that the value of the interests, respectively, of the Complainants and Defendants be ascertained, so that either may purchase the interests of the other, or a sale may be had, if necessary, of either share or interest under the orders of this Court.

Defendants further pray that Complainants be required to make

parties to this cause the said firm of P. Van Syckel & Company and the Santa Cruz Sugar Company, in order that a full and complete decree may be made and entered herein; that such firms are indispensable parties, without whom no final decree can be rendered herein.

And these Defendants deny all and all manner of unlawful combination and conspiracy wherewith they by the said Bill of Complaint are charged; without this, there is any other matter, cause or thing in said Complainants' Bill of Complaint contained
 28 material or necessary for these Defendants to make answer to and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied. It is true to the knowledge and belief of these Defendants all which matters and things these Defendants are willing and ready to aver, maintain and prove as this Honorable Court shall direct, and humbly pray to be hence dismissed with the reasonable costs and charges in this behalf most wrongfully sustained.

SOBRINOS DE EZQUIAGA,

Defendants, Sobrinos de Ezquiaga.

Cross Bill.

The Cross Bill of Defendants Juan José Arsuaga, José P. Arsuaga, Pedro Arsuaga, and Nicasio Arsuaga, Composing the Firm of Sobrinos de Ezquiaga,

To the Honorable Bernard S. Rodey, Judge of the District Court of the United States for Porto Rico, San Juan, Porto Rico.

SIR: And now comes the above-named Defendants—Juan José Arsuaga, José P. Arsuaga, Pedro Arsuaga, and Nicasio Arsuaga—doing business at Sobrinos de Ezquiaga, by the leave of this Honorable Court first had obtained, and file this their Cross Bill herein against the Complainants, as if their names had been fully here repeated, and represent to the Court, as follows:

I.

Defendants say that beginning with the year 1900, and soon after the occupation of Porto Rico by the Government of the United States, the said Paul Van Syckel became involved in a series of lawsuits between himself on the one side and the said Emilio Montilla y Valdespino and José E. Marxuch on the other, the object of which was to protect such interests as the said Paul Van Syckel might have by virtue of the lease hereinbefore referred to in the said Hacienda "Santa Cruz," and it was by reason of a judgment of the United States Provisional Court that the said Marxuch transferred and assigned to the said Paul Van Syckel the mortgage hereinabove referred to.

Upon the assignment and transfer of the said mortgage from the said Van Syckel to the firm of P. Van Syckel & Company it was

intended by him and understood between him and defendants, Sobrinos de Ezquiaga, and such was the basis and consideration of the Articles of Partnership above referred to, that the said firm of P. Van Syckel & Company should acquire all of the rights and title of every kind and character, whether as mortgagee or lessee, which the said Van Syckel had, or might have, in and to the said Hacienda "Santa Cruz."

But Defendants say that at the time the said Emilio Montilla y Valdespino complained of the said assignment of the mortgage aforesaid from Marxuach to Van Syckel, and threatened legal proceedings to annul such transfer, as well as to annul the lease of Van Syckel hereinbefore referred to.

Defendants say, that at that time, and during all of the time referred to in the Bill of Complaint, and particularly in connection with the litigation which subsequently was initiated by the said Montilla y Valdespino against Paul Van Syckel, and P. Van Syckel & Company, Don Eduardo Aenúa, one of the prominent Members of the Bar of Porto Rico, was the attorney acting for and defending the interests of the said Paul Van Syckel personally and the said firm of P. Van Syckel & Company and of these defendants, Sobrinos de Ezquiaga, in so far as concerns the affairs of P. Van Syckel and Company.

Upon the advise of the said attorney it was agreed by and between the said P. Van Syckel & Company and the said Paul Van Syckel personally that to provide against the contingency of the payment of the said mortgage by the mortgagor, Montilla, or of the annulment of the transfer thereof from Marxuach to the said Paul Van Syckel efforts should be made to establish the existence of the said lease, so that in the event that the said firm of P. Van Syckel & Company should not be able to foreclose the said Montilla mortgage, and thus acquire the dominion title to the said Hacienda "Santa Cruz," it would be in a position to continue in the use and possession of the said Hacienda by virtue of the lease aforesaid.

Acting upon this advise of the said attorney, and for such reason only, the said Paul Van Syckel and the firm of P. Van Syckel & Company, entered into the agreement of the Twenty-seventh of July, 1901, before the Notary Santiago R. Palmer, in the City of San Juan, being Exhibit "E" attached to the Bill of Complaint.

It was agreed and understood, however, at the time between the said Paul Van Syckel and the said firm of P. Van Syckel & Company, that this agreement should in no way as between the said parties affect the unrestricted and unlimited rights which the said P. Van Syckel & Company should, or might, be entitled to in and to the said Hacienda "Santa Cruz" by virtue of the assignment to the said firm of the said mortgage, and of the subsequent foreclosure thereof, as was intended and contemplated by the said Paul Van Syckel and the said P. Van Syckel & Company. And it was further agreed and understood at the time of the execution of the said agreement of July 27, 1901, that the said firm of P. Van Syckel & Company should proceed as promptly as possible to the foreclosure of the said mortgage and should bid in the said Hacienda "Santa Cruz" at

pany in so far as relates to the contribution by the said Paul Van Syckel to P. Van Syckel & Company of the said mortgage; and to secure a decree that neither Paul Van Syckel nor P. Van Syckel & Company had been legally in possession of said mortgage of Montilla, or that they had ever been subrogated to the mortgage rights of Marxuach; and that P. Van Syckel & Company, by the said supposed assignment acquired only a personal action against Montilla for the amount of the said mortgage; also to set aside and annul the mortgage foreclosure proceedings aforesaid, and the adjudication thereof to P. Van Syckel & Company.

It was agreed and understood between Paul Van Syckel and the said firm of P. Van Syckel & Company that the latter would avail itself of the said lease and that the same should be recognized in existence by either of the said parties only in the event that the said suit of Montilla should be successful and in the event that P. Van Syckel & Company should be deprived of the dominion ownership of the Hacienda "Santa Cruz," which it had acquired by virtue of the said foreclosure proceedings.

Defendants say that so true is this that the said Paul Van Syckel at no time after the execution of the agreement of July 27, 1901, aforesaid, made any claim of any kind or character to these Defendants, or to the firm of P. Van Syckel & Company, that he was entitled to the said lease, but that, on the contrary, in all of his acts, except as above stated, recognized and respected the absolute rights of P. Van Syckel & Company as the sole and exclusive owner of the said Hacienda without any claim upon his part, either as lessee or otherwise.

Defendants say that at no time since the transfer by Paul Van Syckel to P. Van Syckel & Company did the latter, or any person, pay to Paul Van Syckel any rent or thing of value on account of any supposed lease of the said Hacienda; nor has the said Paul Van Syckel at any time since the foreclosure of the said mortgage and the acquisition of the title thereto by Paul Van Syckel & Company paid any rental or thing of value to the said P. Van Syckel & Company, or to any person for or on account of the said lease. Further, the said P. Van Syckel & Company, with the knowledge, consent and express authority from the said Paul Van Syckel, has leased the said Hacienda "Santa Cruz" at various times, to various people, and has collected the entire rent therefor; and the said Paul Van Syckel up to the time of his death, and his heirs since then, are and have been entitled to one-half ($\frac{1}{2}$) of the benefits derived by the said P. Van Syckel & Company, either from the rental of the said Hacienda or from the use and cultivation thereof, of which due account shall be given and rendered by these Defendants to Complainants.

VI.

Defendants state that on the twenty sixth day of May, 1902, the legal period of the existence of the said firm of P. Van Syckel &

the mortgage foreclosure sale and inscribe the title thereof in its own name, free from all claims, rights or interests of the said Paul Van Syckel.

II.

Defendants say that thereafter, and in accordance with such agreement last above referred to, the said P. Van Syckel & Company instituted in the District Court of San Juan, on the eleventh day of

September, 1901, its action to foreclose the mortgage held by
30 it upon the said Hacienda "Santa Cruz." This foreclosure proceeding was duly carried out, in accordance with the law, and on the twenty-seventh day of November, 1901, and after a due public sale had been had of the said Hacienda "Santa Cruz" the said Hacienda was awarded and adjudicated to the said P. Van Syckel & Company without any limitation or reservation whatsoever in favor of the said Paul Van Syckel, or any other person. A certified and correctly translated copy of the judgment of the District Court of San Juan of the twenty-seventh day of November, 1901, awarding said property, as aforesaid, to P. Van Syckel and Company, is made a part of this Cross Bill and is attached as "Defendant's Exhibit No. 2." Thereupon the said P. Van Syckel & Company, presented in the Registry of Property the said judgment and the title to the said Hacienda "Santa Cruz" was then and there duly inscribed in its name without limitation or reservation in favor of Paul Van Syckel, or any other person.

III.

Defendants state that the said foreclosure proceedings and the taking of the title to the said property absolutely in the name of P. Van Syckel & Company was all done with the knowledge and consent of the said Paul Van Syckel and for the purpose of enabling the said firm of P. Van Syckel & Company to become the absolute owner of the said property; and, further, Defendants allege that by the acquisition of the said mortgage and the foreclosure thereof there has resulted by the laws of Porto Rico a merger or confusion of rights by reason of which the said lease no longer exists.

IV.

Defendants say that notwithstanding the acquisition by P. Van Syckel & Company absolutely of the said Hacienda "Santa Cruz," as aforesaid, the said firm, by agreement with the said Paul Van Syckel and upon the advice of their said attorney, found it necessary, or advisable, apparently to recognize the supposed existence of the said lease, but Defendants say that this was done upon the advice of counsel, as above stated, for the purpose of successfully defending the action which was instituted by the said Emilio Montilla against P. Van Syckel & Company and José E. Marxuach on the fifth day of December, 1902, in the District Court of San Juan, for the purpose of annulling the transfer of the said mortgage to Van Syckel, and subsequently by him to P. Van Syckel & Company; to annul the formation of the Articles of Partnership of P. Van Syckel & Com-

Company was extended a period of four (4) years to count from June 1, 1902. It was provided in the said document of May 24, 1902, that although in the original Articles of Partnership of P. Van Syckel & Company there appears as part of the capital thereof a mortgage-credit on the Hacienda "Santa Cruz," which was acquired by Paul Van Syckel from José E. Marxuach, it is agreed between the parties that such mortgage is extinguished because of the adjudication of the Hacienda "Santa Cruz" in payment

thereof to the firm of P. Van Syckel and Company by virtue of the judgment of the District Court of San Juan of November 27, 1901, hereinabove referred to, by reason of which the said Hacienda forms part of the capital of the said society of P. Van Syckel and Company. The said document further provides that, notwithstanding the adjudication of the said Hacienda was made by the District Court of San Juan in the foreclosure proceedings aforesaid for the sum of Eight Thousand, Eight Hundred Dollars (\$8,800), two-thirds ($\frac{2}{3}$) of the value for which it was appraised, the said Paul Van Syckel and Defendants, Sobrinos de Ezquiaga, agreed that the said property should be considered as having, for the purposes of the contribution by Mr. Paul Van Syckel to the capital of the firm, the value assigned to it in the original Articles of Association, 11,697.75 pesos, Provincial Money. No reference is made in such extension of the Articles of Partnership of May 25, 1902, to any claim or lease by Paul Van Syckel as against the said Hacienda "Santa Cruz." A duly certified and translated copy of the said agreement of May 26, 1902, is made a part hereof and attached as "Defendants' Exhibit No. 3."

VII.

Defendants say that while it is true that in the said Articles of Association of the Santa Cruz Sugar Company it was provided that the said Santa Cruz Sugar Company should pay the sum of One Hundred Seventy-five Dollars (\$175.00) monthly rental to the person or corporation who should be entitled thereto, Defendants say that this clause was placed in the said agreement for the reasons hereinabove expressed, and because of the fact that the said firm of P. Van Syckel & Company expected that the said Emilio Montilla y Valdespino would appeal from the judgment of the Supreme Court of Porto Rico rendered on the seventeenth day of March, 1905, and because it was the purpose and understanding of Paul Van Syckel and of P. Van Syckel and Company to preserve the fiction of the said lease until such time as the said judgment or decree of the Supreme Court aforesaid should become final and effective.

For as much, therefore, as the Defendants herein have no adequate relief, except that affirmative relief which this Court may grant upon the allegations of this Cross Bill, they pray that the Court decree that the said lease, executed by the said Emilio Montilla y Valdespino on the twenty-third day of June, 1897, to the said Paul Van Syckel, for the 279 cuerdas of said plantation "Santa Cruz" be held and determined to be no longer in existence, or of

any force or effect; that all of the rights of the said Paul Van Syckel, as lessee or mortgagee aforesaid, were transferred by him to and vested in the said firm of P. Van Syckel & Company, and that the said firm of P. Van Syckel & Company is the absolute owner of the said plantation without any reservation in favor of the said Paul Van Syckel, or of Complainants, by reason of the said Lease; and that Complainants herein are entitled to one-half ($\frac{1}{2}$) of the value of all of the assets and property of the said P. Van Syckel &

33 Company, including the said Hacienda "Santa Cruz;" and Defendants pray for such other and further relief as under the facts and circumstances of the case and the allegations of this Cross Bill they may be entitled to in equity and good conscience.

FRANCIS H. DEXTER,

Solicitor for Defendants, Sobrinos de Ezquiaga.

Service of a copy of the foregoing Cross Bill is acknowledged this 13th day of June, 1907, by the undersigned, Solicitor for Complainants, who hereby enters his appearance for them in this Cross Bill; it being understood that such Solicitor shall have until the 22nd day of June, 1907, to plead thereto.

N. B. K. PETTINGILL,

Solicitor for Complainants.

EXHIBIT NO. 1 OF DEFENDANTS SOBRINOS DE EZQUIAGA.

Number 368.

Instrument of Partnership.

Executed by Don Paul Van Syckel and Messrs. Sobrinos de Ezquiaga. June 1st, 1900. San Juan, Porto Rico.

Number Three Hundred and Sixty-eight.

In the city of San Juan, Porto Rico, on the first day of June nineteen hundred, before me, Santiago Rosendo Palmer Yrizarry, Notary of the College of Porto Rico and of this vicinity, with residence on the main floor of number twenty-three, Fortaleza Street, corner Cruz street, appear as party of the first part, Don Paul Van Syckel, of lawful age, married, mechanical engineer and resident of Bayamón, and as Party of the second part, Don Miguel Luis Arsuaga y Gayaralde, of lawful age, bachelor, merchant and resident of this city, in his capacity as managing partner of the firm doing business in this market under the name of "Sobrinos de Ezquiaga," organized by instrument dated January twenty-sixth, eighteen hundred and ninety-four, before the notary Don José Agustín de la Torre y Fremaut, recorded in the commercial registry in provisional volume tenth at folio one hundred and fi-ty-eight, sheet number five hundred and sixteenth, registration first.

They have, in my judgment, the legal capacity necessary, which

they aver is not limited to them in any way to execute the present instrument of partnership, and state.

Fol. 241 ov. Vol. First. That Don Paul Van Syckel is the 3rd. Prop. No. 155, owner of the following rural property, situated in the barrio of "Sábana Seca" of the Municipality of Toa Baja, of the Registry of Property of this City, having an area of two hundred and seven

34 cuerdas and forty-three hundredths of land, equivalent to eighty-nine hectares, fifty-three areas and fifty-one centares, bounded on the East, North and West by lands of Señora Gonzales y Beltrán and on the South by lands of Don Antonio Monroig.

Title.—That said property was acquired by him by purchase from Doña Carmen Gonzales y Beltrán, as per instrument dated December twenty-first eighteen hundred and ninety-nine, executed before the notary Don Mauricio Guerra Mondragón y Mejías, recorded in the Registry of Property at folio two hundred and forty-one of volume 3 of Toa Baja, property number fifty-five, registration first.

Value.—That according to the aforesaid title the property hereinabove described, is worth four thousand one hundred and forty-eight pesos, special money of Porto Rico, known as provincial currency.

Liens.—That also, as appears from the aforesaid title, the property is free from all liens and encumbrances.

Mortgage credit of eleven Thousand Six Hundred and Ninety-Seven pesos and sixty-fives centavos special current money of Porto Rico, on the sugar cane plantation named "Santa Cruz," situated in the barrio "Juan Sanchez" of the municipality of Bayamón, in the Registry of Property of this City, with an area of three hundred and fourteen cuerdas of land, equivalent to one hundred and thirteen hectares, forty-one areas and forty-six centares, which is bounded on the East by the plantation "Caridad" that belonged to Don José E. Berrios, divided by the Bayamón River, on the North by the plantation "Santa Barbara" of Don Miguel Lopez, on the West by the town, and lands of Don Juan Basilio Nuñez, and on the South by the said Señor Nuñez.

Sources.—That Don Emilio Montilla y Valdespino answers for the said mortgage credit and it belongs to him by cession that was made to him by Don José Eleuterio Marxuach y Echevarria, under instrument executed before me on the sixteenth day of March of the current year, recorded in the Registry of Property at folio fifty-seven over, volume nineteen of Bayamón, property number seventy-nine duplicate, registration fifteenth.

Value.—That the aforesaid credit if it be true that it is for the amount hereinabove mentioned, it has for the purpose of this contract, and without prejudice to the interest thereto accruing, a value of eleven thousand seven hundred and twenty-four pesos and seventy seven centavos, current money in Porto Rico.

Liens.—That likewise it is free from all obligations or liens.

Cattle.

Eleven Thousand one hundred and eighteen pesos current provincial money in the value of the existing cattle, as appears in detail

by the inventory which they have made and which will be attached at continuation of this instrument.

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Appurtenances.

One Thousand Eight Hundred and Ninety-seven pesos and ninety one centavos of the same money, which, as it is also set out in the said inventory, is the value of the appurtenances therein stated in detail.

Cash.

One Thousand one hundred and eleven pesos and thirty two centavos, also provincial money which amount is on hand and which appears in the aforesaid inventory. And therefore all of the above gives the following recapitulation:

Value of the cattle as per inventory, eleven thousand one hundred and eighteen pesos.....	\$11,118.
Value of the appurtenances, one thousand eight hundred and ninety seven pesos ninety one centavos.....	1,897.91
Value of the mortgage described on the plantation Santa Cruz, eleven thousand seven hundred and twenty-four pesos and seventy-seven centavos.....	11,724.77
Value of the rural property in Sabana Seca hereinabove described, Four thousand one hundred and forty-eight pesos.....	4,148.00
Amount in cash, one thousand one hundred and eleven pesos and thirty-two centavos.....	1,111.32

Which said items make a total of Thirty Thousand Pesos \$30,000.00

Division of the Capital.

Second. That with the capital hereinabove stated Mr. Van Syckel agreed with Messrs. Sobrinos de Ezquiaga upon the organization of a universal civil partnership for the purpose of engaging in the dairy business, and in the purchase of cattle, the aforesaid property becoming common property to the partners thereof, and in the proportion of fifteen thousand pesos for Mr. Van Syckel and fifteen thousand pesos for Messrs. Sobrinos de Ezquiaga, the latter having paid in cash to the former that amount of money, so that the contracting parties shall be the owners in the aforesaid proportion of one-half of all the property set forth in the inventory and which has been mentioned in the preceding clause and accepted in conformity.

Name of the Firm.

Third. The firm shall do business under the name of "P. Van Syckel and Company" and the administration and management of the same shall be had indistinctly by both partners, and in case of absence of Mr. Van Syckel, the contracting parties shall appoint a person worthy of confidence to take charge of the property as an employee of the firm.

Term.

Fourth. The term for which the firm is organized shall be of two years, which will become due on the thirty first day of May nineteen hundred and two, but they may agree upon the dissolution of the contract before the expiration of that term, either because of convenience to both parties or because of disagreement in the course of the business or for any other cause. They may also decide to continue the same for two years longer or for such time as they may deem convenient.

Profits or Losses.

Fifth. The profits or losses which may be had by the firm shall be apportioned by halves to both contracting parties.

Balances.

Sixth. Every three months a balance shall be taken and the resulting profits in cash shall be credited in equal parts to each partner, and, if decided upon by both contracting parties, such profits may be invested for the development of the business.

Monthly Inventory.

Seventh. The partner Mr. Van Syckel is bound to deliver to Messrs. Ezquiaga monthly an inventory of all the existing cattle, Messrs. Ezquiaga are at the same time bound to deliver to Mr. Van Syckel a statement of the profits or losses which may result in the business, monthly.

Prohibition.

Eighth. The partners are prohibited from disposing of the stock or cattle and effects belonging to the firm without the previous approval and agreement of both parties.

Neither could the firm dispose of larger sums than the profits in cash, which may be obtained from the dairy business.

Increase of Capital.

Ninth. If hereafter both contracting parties shall decide to enlarge the business, the capital may be increased for the same industry as well as for the purchase of land.

Declaration.

Tenth. As in the capital appearing in the inventory there appears a mortgage credit for which Mr. Emilio Montilla Valdespino is answerable, should this gentleman desire to pay that amount and interest thereon until the date of payment which under this instrument becomes the property of the firm hereby organized, the cancellation thereof shall be made and whatever the amount shall be credited to the capital account of each partner.

Death.

Eleventh. In case of the death of the partner Mr. Van Syckel before the expiration of the term for which the firm is organized his heirs, by agreement with Messrs. Sobrinos de Ezquiaga, shall decide whether the firm shall be liquidated or continue.

Differences.

Twelfth. Any difference arising between the partners shall be submitted to friendly arbiters, elected one by each party, and in case of disagreement, a third shall be elected by lot by the parties to whose decision they shall submit, binding themselves to stand and abide by the decision that may be rendered as an executory judgment without further claim.

Explanation.

Thirteenth. If later on the debtor of the mortgage hereinabove described in this instrument should desire to recuperate the same, this firm shall be bound to transfer it without any opposition, paying of course, the capital and interest up to the date of the transfer, and the resulting amount shall be credited to the capital account of each partner.

In which terms they organized this partnership, which clauses and conditions they bind themselves to comply with faithfully.

I, the Notary, informed them as to the following: That this instrument should be recorded in the Registry of Property of this city, without which requisite it will not be admissible in any tribunal, council or office of the government, except in the cases excepted by article three hundred and eighty-nine of the Mortgage Law.

Execution.

They so covenant and sign with the witness to this instrument, residents of this city, Don Gerónimo Carreras and Don Salvador Bugella, upon my reading them the same and advising them to their right to do so each one for himself, which they did.

I, the undersigned Notary, certify as to the identity, profession and residence of the parties hereto and to all the contents of the present public instrument.

P. VAN SYCKEL.
SOBRINOS DE EZQUIAGA.
SALVADOR BUGELLA.
GERONIMO CARRERAS.

(Signed) SANTIAGO R. PALMER.

38 *General Inventory of Stock of the Firm of P. Van Syckel and Company.*

Cattle.

131 cows at 50 pesos each.....	\$6,550.00
105 young cows and bulls at 28 pesos each.....	2,938.00
11 working oxen at 50 pesos each.....	550.00
9 horses at 60 pesos each.....	540.00
6 mares at 50 pesos each.....	300.00
15 calves at 10 pesos each.....	150.00
3 colts at 20 pesos each.....	60.00
Total	\$11,118.00

Appurtenances.

1 milk tank with all its accessories of jars, bottles, baths, etc.	1,052.00
2 carts at 65 pesos each.....	130.00
3 carts at 40 pesos each.....	120.00
1 milk carts at 53.75 pesos each.....	215.00
22 liquid gallons, for cleaning jars at 75.59 gold current money	125.98
Invoice in wheels, axles, springs bronze padlocks.....	254.00
Total	\$1,897.01

Mortgage.

Value of the mortgage on the property of Santa Cruz... \$11,724.77

Rural Properties.

Value of the property Sabana Seca, purchased from Geigel

\$4,148.00

Recapitulation.

Value of the cattle as per inventory.....	\$11,118.00
Value of appurtenances	1,897.91
Value of the mortgage on Santa Cruz.....	11,724.77
Value of the property Sabana Seca.....	4,148.00
Value of the working capital.....	1,111.32
Total	\$30,000.00

(Signed)

SOBRINOS DE EZQUIAGA,
P. VAN SYCKEL.

39 The foregoing is a first copy from the *priginal* thereof on file in my current protocol of public instruments under number of order aforesaid. And to deliver to Messrs. Sobrinos de Ez-

quinga, I issue the same in four sheets of special paper, the paper of the notarial college of Porto Rico having been exhausted, on the same day, month and year of its execution.

[SEAL OF THE NOTARY.]

SANTIAGO R. PALMER.

The preceding document has been recorded at folio fifty of provisional volume seventeenth of partnership, sheet number nine hundred and six, registration first.

San Juan, Porto Rico, June 27th 1900.

[SEAL OF THE REGISTRY.]

The Registrar, JOSÉ BENEDICTO.

The preceding document has been recorded as to the property and mortgage credit therein referred to at folios two hundred and forty-one over and two hundred and thirty-seven of volume third of Tomo Baja and twentieth of Bayamón, properties one hundred and fifty-five and seventy-nine cuadruplicate, registrations second and 17th respectively.

San Juan, Porto Rico, August 7th, 1901.

Fees sixteen pesos seventy-five centavos. No. 1 of the Tariff.

The preceding document has been entered under annotation letter D of property seventy-nine cuadruplicate, folio two hundred and forty over of volume twenty of Bayamón.

San Juan, Porto Rico, December the 6th, 1902.

[SEAL OF THE REGISTRY.]

The Registrar, JOSÉ BENEDICTO.

A true and correct translation,

P. DE CASTRO,

Interpreter and Translator.

(EXHIBIT 2 FOR DEFENDANTS.)

Translation of Adjudication by the District Court of San Juan to P. Van Syckel & Co., of Hacienda "Santa Cruz."

Attached to Exhibit No. 2 of Defendants Sobrinos de Esquiagas' Cross-Bill.

NOVEMBER 27, 1901.

I, Ramón Falcón y Elías, Secretary of the District Court of San Juan, do hereby certify:

That in the executory action prosecuted by the firm of P. Van Syckel & Company against Don Emilio Montilla y Valdespino, the following final writ has been issued:

40 "Porto Rico, November twenty-seventh, nineteen hundred and one.

This case coming up for discussion and

It appearing that by public instrument executed in this city, on the nineteenth day of August of Eighteen hundred and ninety-two, before the Notary Don Juan Ramón de Torres, Don Emilio Montilla y Vadespino, as owner and possessor of the sugar cane plantation named Santa Cruz, situated in the municipal district of Bayamón, acknowledged to have received from Don José E. Marxuach y Echegarria, four thousand pesos, Mexican money, which amount he agreed to return within a term of three years, namely, on the eighteenth day of August, eighteen hundred and ninety-five with interest thereon at ten per cent per annum and as security for the capital loaned, of twelve hundred pesos additional for interest and a further amount of five hundred pesos for costs in case of a judicial claim, the whole of said sums amounting to five thousand seven hundred pesos, the debtor Señor Montilla placed a voluntary mortgage on the aforesaid plantation Santa Cruz, to which he assigned an area of three hundred and fourteen cuerdas, which title was recorded in the Registry of Property at San Juan, in Volume Second of Bayamón, folio One hundred and sixteen over, property number seventy-nine, registration ninth; and

It appearing: That by another instrument executed under date of March twenty-eighth of eighteen hundred and ninety-four, executed before the Notary Don José Agustín de la Torre, the said Don Emilio Montilla Vadespino also acknowledged having received, under like title of loan, and from the hands of the aforesaid Señor Marxuach a further amount of three thousand pesos, Mexican money, which amount he bound himself to return on the fifteenth day of March, eighteen hundred and ninety-seven, with interest thereon at one per cent per month, and as security for said loan, as well as for the estimated sum of four hundred pesos for interest, and a further sum of four pesos, for cost, in all making a total of three thousand eight hundred pesos, the debtor placed a new mortgage on the aforesaid plantation Santa Cruz, which title was likewise recorded at folio one hundred and fifty-six of volume eleventh of Bayamón, Property Number Seventy-nine, duplicate registration tenth; and

It appearing that by an instrument executed on the ninth day of August eighteen hundred and ninety-four, before the aforesaid Notary, Torres, the said debtor Emilio Montilla made a further acknowledgement of loan in favor of the said Marxuach for four thousand pesos additional, current money, that is to say, Mexican, which he promised to return with interest thereon at one per cent per month, on the fifteenth day of March of eighteen hundred and ninety-seven, mortgaging likewise as security for the loan, and of one thousand pesos additional, estimated by halves for interests and costs, or say, for a total of five thousand pesos, the aforesaid plantation with the area hereinbefore stated, which title was also recorded in the registry at Folio One Hundred and fifty-seven of Volume Eleventh of Bayamón, property number Seventy-nine, duplicate, Registration Eleventh; and

41 It appearing: That in the two instruments last above mentioned, the debtor and creditor, by mutual agreement, appraised the mortgaged property in the amount of twenty-three thousand pesos of the money then current, waiving new appraisal and an action to that purpose, I mean, to ask for it, and the mortgaged property is described as follows:

"Sugar cane plantation named "Santa Cruz" situated in the barrio of Juan Sanchez, municipal district of Bayamón, composed of an area of three hundred and fourteen cuerdas, equivalent to one hundred and thirteen hectares, forty-one ares, and forty-six cent-ares, bounded on the east by the plantation "Caridad" that belonged to Don José Escolástico Berrios, divided by the Bayamón River; on the North by the plantation "Santa Barbara" of Don Miguel Lopez; on the West by the town and lands of Don Juan Bacilio Nuñez, and on the South by the islet of said Nuñez."

It appearing by instrument executed on the twenty-third day of June of eighteen hundred and ninety-seven, before the notary Don Mauricio Guerra, Don Emilio Montilla entered into a contract of lease with Don Pablo Van Syckel y Paul, of the plantation "Santa Cruz" deducting therefrom thirty-five cuerdas which he had previously leased to Don Rafael Gutierrez del Arroyo, by virtue of which contract the said Van Syckel received the said property as lessee, binding himself to pay, as rent therefor the amount of two hundred and five pesos provincial money; it being one of the conditions of that stipulation, that there being no time fixed for the expiration of the said contract, the same shall endure and the owner would be bound to respect the same so long as the lessee should comply with the payment of the monthly rent, and said instrument was recorded, as to Folio two hundred and fifty-nine over, of Volume Eleven of Bayamón, property Number Seventy-nine, Registration Fourteenth and

It appearing that before the Provisional Court of the United States the said Señor Van Syckel prosecuted an action against Don Emilio Montilla and Don José E. Marxuach, by reason of the aforesaid contract of lease, wherein judgment was rendered commanding the said Marxuach to assign and transfer to Van Syckel the three mortgage credits which he had on the plantation "Santa Cruz," and said transfer was carried into effect by instrument executed under date of March sixteenth, nineteen hundred, before the Notary Don Santiago R. Palmer, of which the debtor was notified on the twenty-seventh day of said month, for the amount of eleven thousand six hundred and ninety-seven pesos and sixty centavos, provincial money, of which amount, ten thousand four hundred and fifty pesos, provincial, are the equivalent of the sum of eleven thousand pesos, Mexican, which was the sum total of the three mortgage credits, and the balance of one thousand two hundred and forty-seven pesos and sixty centavos, represented the amount of interest accrued and unpaid since February Eighteen hundred and seventy-nine up to the date of the instrument of transfer at the contract rate, which said contract, as well as the act of notification, was recorded in the Registry at Folio fifty-seven of Volume nineteen of Bayamón, Property seventy-nine triplicate, Registration Fifteen.

It appearing that the said Van Syckel mortgaged creditor and lessee of the property so often mentioned, and the firm of Messrs. Sobrino de Ezquiaga, organized, under instrument dated June 1st, nineteen hundred, and under the name of P. Van Syckel y compañía a civil private partnership, for the purpose of engaging in the dairy business and in the purchase of cattle, the said Van Syckel bringing into the firm the mortgaged credits, which are the object of this claim, and which were transferred to him by Marxuach, which was done for the total amount thereof and interest accrued and unpaid thereon, of which notice was served on the said Montilla, and said instrument was recorded at Folio Two hundred and thirty-seven of Volume Eleventh, Property No. Seventy-nine, quadruplicate, Registration Seventeenth; and

It appearing that by another instrument executed on the twenty-seventh day of July of the current year, the firm of P. Van Syckel y Compañía, as mortgage creditor, and Don Pablo Van Syckel y Paul, as lessee of the property "San Cruz" entered into an agreement under which any and all rights of prelation of the three mortgage credits, represented by the former, on account of their dates, were thereby postponed to the real right of lease which the other party Van Syckel has in his favor, the former having made express waiver of such rights as it may have to ask for a rescission of the contract of lease, which said agreement was recorded at folio two hundred and thirty-seven over of said volume eleventh, registration eighteenth.

It appearing that Don Eduardo Acuña Aybar, lawyer, in the name and on behalf of the firm of P. Van Syckel y Compañía, filed a petition with the court praying that Don Emilio Montilla y Valdespino be required to pay, within the term of thirty days, the amount of Eight thousand and thirty-six dollars and ninety-nine cents, which he owes on the principal and interest, and in addition thereto such costs as may be incurred, with notice that failing to do so his plantation "Santa Cruz" would be sold at public sale, and by an additional prayer asked for a notification to be served on Doña Dolores Gutierrez del Arroyo and on Don Rafael of the same surnames, who are the only interested parties in the liabilities of the property, recorded prior to the right which is claimed.

It appearing that the titles hereinbefore mentioned were attached to the said petition together with a certificate issued by the Registrar of property of San Juan, dated September tenth, ultimo, from which it appears that the said mortgage credits have not been cancelled, nor are they pending of cancellation, as per the Day Book, by the filing of any document in reference thereto, and that the property "Santa Cruz" is encumbered by the following liens:

By a censo in the amount of five hundred pesos of the principal with interest thereon at five per cent per annum, in favor of the Convent of Preachers, entry of which is set forth in the books of the old office for the recording of mortgages at Folio One hundred and fifty-seven, Volume second of Bayamón, Registration Twelfth.

By another censo of four hundred pesos of the principal and same rate of interest as the former, in favor of the congregation of the Priest Don Lorenzo Soto Mayor, stated in Registration Thirteen, of

said Property, at Folio One Hundred and fifty-eight of the volume hereinabove mentioned.

By a mortgage in the amount of One thousand pesos, in favor of Don Juan Hernandez Garcia, as balance of the amount of Three thousand pesos comprised in the first instalment of Fourteen thousand eight hundred, constituted by Don Segundo, I mean, by Don Fernando Segundo Montilla, in favor of Don Emilio, of the same surnames, and assigned by the latter to Hernandez Garcia, as per entry No. sixty-two at Folio twenty-nine of Book Thirty-two of the old Registry, referred to in Registration Second, Folio One hundred and eight, Volume Second of Bayamón.

By a sub-mortgage of Eight thousand pesos, provincial money, constituted by Don Emilio Montilla in the mortgage credit which he represented on the said property to secure the office of Treasurer of the Diputación Provincial, recorded at Folio One hundred and thirteen of Volume Eleventh aforesaid at Bayamón.

By the mortgage credits for Eleven thousand Mexican pesos in favor of the first claimant, having, in addition, as later liens, a cautionary notice of the suit brought by Doña Dolores Gutierrez del Arroyo against the defendant in a declaratory action for performances of a contract and execution of a mortgage instrument, set forth in entry "B" and at Folio Fifty-seven over, of Volume nineteen of Bayamón, and

By a real right of lease constituted in favor of Don Rafael Gutierrez del Arroyo on thirty-five cuerdas of the property hereinabove described, stated in Registration Sixteenth of the same.

It appearing that by writ dated September ultimo, the requisition prayed for to Don Emilio Montilla was ordered, as well as the notification solicited in the additional prayer, the former having been made on the twenty-first day of September aforesaid.

It appearing that at this stage the Attorney for the firm plaintiff filed a petition, attaching thereto several receipts and vouchers of taxes paid on the mortgage property, asking that at the public sale, which was, of course, solicited because of the failure of the defendant to pay the amounts claimed through the term granted therefor had expired, to take into account the amount of such taxes, which was Four hundred and one dollars and thirty-nine cents, all of which was granted by writ issued October twenty-eighth, ultimo.

It appearing that there being no bidder at the public sale, the attorney for the plaintiff petitioned for a liquidation of the exact amount of the liabilities of a preferred character over the credits which are the object of the foreclosure and which encumber the plantation "Santa Cruz," which said liquidation was made, and furthermore that an order of adjudication issue in favor of the firm plaintiff for such amount as may result, after deducting the amount of preferred credits from that of Eight Thousand seven hundred and forty dollars, which is the value of two-thirds parts of the amount at which the property had been appraised by mutual agreement, in its equivalent in American currency, reserving such rights as it may have to collect the part of the credit that they may not receive; and

Whereas, the mortgage property was offered at public sale, and there being no bidders to make offers thereon, it is discretionary with the party plaintiff to petition for a second public sale or for the adjudication of the property for two-thirds of the appraised value thereof; and

Whereas, in this connection, the petition of the plaintiff is a proper one,

Now, therefore, in view of the legal provisions in the case, the mortgage property described in paragraph Fourth of the statement of facts is adjudicated to Messrs. P. Van Syckel & Company for the amount of Eight thousand seven hundred and forty dollars, the same being two-thirds of the appraised value of said property, that is to say, the plantation of sugar cane named "Santa Cruz," situated in the barrio of Juan Sanchez in the municipal district of Bayamon having an area of three hundred and fourteen cuerdas, equivalent to one hundred and thirteen hectares, forty-one ares and six centiares; bounded on the East by the plantation "Caridad" that formerly belonged to Don José Escolástico Berries, divided by the Bayamon River, on the North by the plantation "Santa Barbara" of Don Miguel Lopez; on the West by the town and by lands of Don Juan Basilio Nuñez; and on the South by the islet of said Nuñez; it being understood that from the said amount there shall be deducted the value of prior liens although the liquidation of the Diputación Provincial to answer for the office of Treasurer of that corporation imposed on the debtor must be awaited, there remaining only the preference in favor of the credits hereby foreclosed and reserving to the party plaintiff its right to claim that which they may not be paid for. It was so ordered by the members of the court who signed, and I certify.—Juan R. Ramos.—Juan Morera Martínez.—José R. F. Savage.—Ramón Falcón. I further certify that this day the aforesaid attorney at law Mr. Acuña, has filed a petition, the additional prayer of which and order of court by reason thereof issued, are as follows:

"Additional Prayer: In order to record in the Registry of Property the adjudication of the property to my clients, I ask that a literal certified copy of the writ of adjudication, dated November twenty-seventh, ultimo, and of the order issued by reason of this petition, be issued to me in so far as may modify it in the aforesaid respect. Therefore, I pray the Court to Order the Secretary to issue the aforesaid certificate upon payment of the proper internal revenue stamp, Porto Rico, January seventeen, nineteen hundred and two.—Eduardo Acuña.

Porto Rico, January seventeenth, nineteen hundred and two. This petition coming up for decision as to the main part of that

of December seventh, ultimo, of the attorney Don Eduardo

45 Acuña, let an order, in duplicate, be issued to the Registrar of

Property of this capital, commanding him to proceed to cancel all liens and encumbrances on the plantation Santa Cruz appearing recorded subsequent to the credits which are the basis of this foreclosure, taking as a basis for the determination of such encumbrances, the liquidation of liens made by the Secretary prior to the

adjudication; let notice be served upon Mr. Paul Van Syckel or on his legal representative Don José R. Arsuaga of the adjudication of the property made in favor of P. Van Syckel & Company for the purpose of the contract of lease entered into by the former with the debtor Montilla, and let the firm of P. Van Syckel & Company be put in possession of the thirty-five cuerdas of land belonging to the said plantation and which appear as possessed by Don Rafael Gutiérrez del Arroyo as lessee thereof, with notice of such possession to the said Gutiérrez del Arroyo. And in reference to the preceding writing, and to the main part thereof, the certificate therein referred to is deemed as attached and let the same be attached to the record, deducting from the preferred liabilities of the property the mortgage for security of the office of Treasurer of the Diputación Provincial of Mr. Montilla. To the additional prayer: Let the certificate therein referred to be issued and delivered to the petitioner. It was so ordered by the members of the Court and signed by the President, in which I certify. There is a rubric. Ramón Falcón."

And to be delivered to the interested party in compliance with orders I issue the present in San Juan, Porto Rico, this seventeenth day of January Nineteen Hundred and two. Ramón Falcón.

Internal revenue stamp of the value of two dollars cancelled.

The preceding document has been recorded at Folio Two Hundred and thirty-nine, Volume Twenty of Bayamon, Property No. Seventy-nine, quadruplicate, Registration Twentieth, San Juan, Porto Rico, January eighteen, nineteen hundred and two. The Actin, Registrar, Eduar Acuña—Twelve pesos, Numbers one and seven of the Tariff.

Seal of the Registrar of Property.

A true and correct translation.

P. DE CASTRO.

Interpreter and Translator.

DEFENDANTS SOBRINOS DE ESQUIAGA EXHIBIT NO. 3 ATTACHED TO THEIR CROSS-BILL.

Number Eighteen.

Instrument of Extension of Civil Partnership, Executed by Mr. Paul Van Syckel, for himself, and Don Nicasio Arsuaga Gayaralde, on Behalf of the Firm of Sobrinos de Esquiaga, San Juan, Porto Rico, May 26, 1902.

46 Number Eighteen.

Extension of Civil Partnership.

In the City of San Juan Bautista de Puerto Rico, on the twenty-six day of May, nineteen hundred and two, before me, Eduardo Acuña Aybar, lawyer and notary public of the Colleges of this

Island, with residence and office on Luna Street, Number Eighty-eight. Appear.

As party of the first part, Don Paul Van Syckel, of lawful age, married, mechanical engineer, and resident of Bayamón.

And as party of the second part Don Nicasio Arsuaga y Gavaralde, of lawful age, bachelor, merchant, and resident of this city, in his capacity as managing partner of the commercial firm of this market named "Sobrinos de Ezquiaga" organized by instrument of January second of the current year, executed before the Notary Don Santiago R. Palmer and recorded in the Commercial Registry of this city at folio two hundred and seventeen, of volume nineteen of firms, sheet number one thousand and nine, registration first.

The parties hereto assure me that they are in the full enjoyment of their civil rights, and having, in my judgment, sufficient legal capacity to enter into the present instrument of extension of partnership, state:

First. That on June first, nineteen hundred, and by instrument executed before the Notary of this city, Don Santiago R. Palmer, Messrs. Paul Van Syckel, for himself, and Mr. Miguel Arsuaga y Gavaralde, as managing partner of the firm of Sobrinos de Ezquiaga, organized under the name of P. Van Syckel y Compañía, a civil universal partnership with residence in this city, for the purpose of engaging in the dairy business and purchase of cattle.

Second. The said firm was organized with a capital of Thirty thousand pesos, brought into it by both partners in the proportion of Fifteen thousand pesos by Mr. Paul Van Syckel and Fifteen thousand pesos by Messrs. Sobrinos de Ezquiaga, who delivered said amount of money in cash to the former, so that the property set out in the inventory, belonging to Mr. Van Syckel, should become the property of both partners and in the aforesaid proportion of one-half to each of them.

Third. That by clause fourth of the instrument hereinabove referred to, which I have before me at this act and return to the interested parties, with entry thereon to that effect, the term of two years was fixed as the period of time for the duration of the said firm, making it discretionary with the parties to either extend or dissolve the firm at the expiration thereof, or two years more, or for such time as they may deem convenient.

Fourth. That the aforesaid period of time being about to expire on the thirty-first day of the current month for the aforesaid firm, the parties, in view of the good result of the business have agreed mutually to extend the same for the term and in the manner herein-after stated.

47 Fifth. That although in the instrument of organization of

P. Van Syckel y Compañía it is set forth therein, as capital of the said firm, a mortgage credit on the plantation "Santa Cruz" for which Don Emilio Montilla Valdespino answered and which was acquired by Mr. Paul Van Syckel by transfer made to him by Don José Eleuterio Marxuach y Echevarria, under instrument dated the sixteenth day of March, nineteen hundred, executed before the aforesaid Notary, Palmer, it is the fact and it is so set forth by the parties

that the said credit has been duly cancelled as the said property "Santa Cruz," hereinafter described, was adjudicated in payment thereof by order of the District Court of this city dated November twenty-seventh, nineteen hundred and one, and issued in the executory action prosecuted by the firm of P. Van Syckel y Compañía against Don Emilio Montillo for the cancellation of the aforesaid mortgage credit in the amount of Eleven thousand seven hundred and twenty-four pesos and seventy-seven centaves, said property becoming therefore part of the capital of the firm, and which said property under a survey made by the surveyor, Mr. A. Camilo Gonzalez, is described in the manner following:

Rural Property: named "Santa Cruz" situated in the barrio of Juan Sanchez of the municipal district of Bayamón, composed of three hundred and twenty-three cuerdas, two hundred and eighteen varas, nine hundred and twenty-three hundredths, equivalent to one hundred and twenty-six hectares, ninety-seven ares, two centares and twenty-nine milares, bounded on the north by the River Bayamón, which separates it from the plantation Santa Barbara of Don Miguel Lopez, and from the plantation Caridad of Don Rafael Copiña and by lands of the plantation San Antonio belonging to Osvaldo Abril; on the south by lands of the property named Islet of Doña Isabel Nuñez; on the East by lands of the said plantation Santa Barbara from which it is partly separated by the old river bed and in another part by the present bed of the river; by lands of the plantation Caridad of Señor Coliño from which it is also separated in the same manner and by lands of the plantation San Antonio; and on the West by the Bayamón River and by the Plantation Santa Barbara on the other bank thereof, by lands of Don José de Jesús Pesquera and by lands of Doña Isabel Nuñez: there are on said lands two frame houses built of native and foreign lumber and galvanized iron roofing; another house built of masonry work which was formerly used for manufacturing bricks; a frame shed with galvanized iron roofing, devoted to a dairy, and a sugar cane mill, the latter being in a ruinous condition.

Sixth. That the title of adjudication of the plantation Santa Cruz referred to in the preceding paragraph hereof, was taken to the Registry of Property for the district, and it was the object of registration Twentieth of Property Number Seventy-Nine, quadruplicate, at Folio Two Hundred and thirty-nine, of Volume Twenty of Bayamón.

Seventh. That notwithstanding the fact that it was stated in the aforesaid order of court of November twenty-seventh nineteen hundred and one, that the adjudication of said property was made for the amount of eight thousand seven hundred dollars, which was two-thirds of the appraised value thereof in the contract of mortgage loans entered into by and between Messrs. Montilla and Marxuach, the contracting parties assigned to the property, for the time being, as the value thereof, for the purpose of this contract, the same value as was represented by the mortgage credits brought into the firm by the partner Van Syckel, namely, Eleven thousand six

hundred and ninety-seven pesos and seventy-five centavos, provincial money, for the reason that as the total value of the preferred liens on said property, for which the adjudicatees are answerable, nor the cost of the action, have not as yet been liquidated, no value can be given thereto in connection with the cost of the acquisition thereof so as to determine whether or not there was any profit or loss to the firm, which operation they postponed until the moment shall have arrived for the final liquidation of the firm or before that time, should it be convenient to them.

Eighth. Therefore, the contracting parties, carrying the agreement into effect, on the basis hereinabove stated, covenant.

That the firm of P. Van Syckel & Company is hereby extended for four years more from and after the first day of the month of June of the current year, continuing its business and operations under the same clauses and conditions as are stipulated in the instrument of the organization thereof referred to in paragraph first of the facts herein, without making in any one of them any alteration that may modify the content thereof and without any other explanation than that stated in paragraph fifth, sixth and seventh of this instrument.

To a compliance herewith they bind themselves in accordance with law.

It was so stated by the contracting parties, to whom I, the Notary, informed that a copy of this instrument should be taken to the Commercial Registry and to the Registry of Property for the District, to be recorded therein, without which requisites it shall have no value whatever, nor will it be admitted in any court or office of the government in accordance with the provisions of the Code of Commerce now in force.

Witnesses.—Don Pedro de Elzaburn y Vizcarrondo y Don Mariano Acosta Quintero, both of lawful age, of this vicinity, and without legal exception to act as such.

And having read this instrument in full to the parties and witnesses, they having waived their right, of which I informed them, to do so each one for himself, the former affirm and ratify the same and sign with said witnesses.

To all of which, as well as the identity, of the contracting parties and of knowing their profession and residence, I, the Notary, certify.

P. VAN SYCKEL,
N. ARSUGA.

PEDRO DE ELZABURN,
MARIANO ACOSTA.

(Signed)

EDUARDO ANCUSA,
Lawyer and Notary.

49— It is a true copy from the original thereof which under the aforesaid number Eighteen remains on file in the current protocol of my office of notary, having affixed thereto an Internal Revenue stamp of the value of one dollar, and to which I refer. And for the firm of Sobrinos de Ezquiaga I issue this first copy in four

sheets of paper of my office, affixing also hereto an internal revenue stamp of the value of fifty cents under my hand and seal of this office of Notary in San Juan, Porto Rico, on the same date of the execution thereof.

EDUAR. ACUSA,
Lawyer and Notary.

Internal revenue stamp of the value of fifty cents cancelled by the seal of the notary.

The preceding document has been recorded at Folio Fifty-one over, of Volume Seventeen of Partnerships, Sheet Number Nine hundred and six, Registration Second, San Juan, Porto Rico, June five, nineteen hundred and two.

The Registrar, JOSÉ BENEDICTO,

[SEAL OF THE COMMERCIAL REGISTRY.]

The preceding document has been entered in annotation letter "D" of property Number Seventy-nine, quadruplicate, Folio Two Hundred and forty over, Volume Twenty of Bayamón, San Juan, Porto Rico, December sixth, nineteen hundred and two.

The Registrar, JOSÉ BENEDICTO,

[SEAL OF THE REGISTRY OF PROPERTY.]

A true and correct translation.

P. DE CASTRO,
Interpreter and Translator.

Demurrer to Cross-bill.

Filed June 15, 1907.)

SOBRINOS DE EZQUILAGA

vs.

ADA ELMIRA H. VAN SYCKEL et al.

Cross-bill.

Come now the defendants to the above entitled cross bill, by their solicitors Pottingill & Leake, and demur to the said cross bill and say that the same is insufficient in law to be replied unto, and for grounds of said demurrer state

I.

That said cross complainants have not in and by their said cross bill made or stated such a case as entitled them to the relief thereby prayed, or to any relief against these cross-defendants.

50

II.

That there is no equity in said cross-bill.

III.

That, taking the allegations of said cross bill to be true, the complainants therein do not come into this court of equity with clean hands in respect to the transaction from which they pray to be relieved when they allege that said transaction was not in its inception bona fide but was a mere pretence and fiction and that they were parties thereto; and that therefore they are not entitled, as to the transaction alleged, to either consideration or relief in this court of equity.

Wherefore these defendants pray the judgment of the court whether they be required further to answer said cross-bill, and that the same may be dismissed.

PETTINGILL & LEAKE,

Solicitors for Defendants in Cross-bill.

I hereby certify that in my opinion the foregoing demurrer is well founded in law, and that the same is not interposed for delay.

N. B. K. PETTINGILL,

Of Counsel.

Statement and Opinion Overruling Demurrer to Cross-bill and Permitting Proof Thereunder.

(Filed June 29, 1907.)

ADA ELMIRA HIRST VAN SYCKEL et al.

VS.

SOBRINOS DE EZQUILAGA et al.

This cause is before us now on a demurrer to the cross-bill. Counsel on both sides have had an oral hearing on the matter and have filed briefs. We have no time to write a lengthy opinion, but we refer to said briefs in the files, where the contentions of the respective counsel are set out; and we also refer to the exhibits accompanying the original bill.

After a consideration of the terms of the cross-bill and of the arguments of the respective counsel and of their briefs as filed, we cannot bring ourselves to hold that respondents have not the right to file this cross-bill and to prove its allegations, if they can, that the lease referred to has become innocuous and is merged in the partnership agreement existing between the parties.

We express no opinion as to what we will hold on the subject when the proofs are in, but we do hold, and it is therefore ordered, that the demurrer to the said cross-bill should be, and hereby is overruled, and issue must be raised and proofs must be taken thereon pro and con with the rest of the case.

Let an order to this effect be entered.

B. S. RODEY, *Judge.*

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Answer to Cross-bill.

(Filed October 7, 1907.)

ADA ELMIRA HIRST VAN SYCKEL et al.

vs.

SOBRINOS DE EZQUIAGA et al.

Bill to Wind Up Partnership.

Answer to Defendants' Cross-bill.

The joint answer of the complainants, Ada Elmira Hirst Van Syckel, Margaret Esther Van Syckel, Barbara Paul Van Syckel, William Henry Van Syckel, John Archbold Van Syckel and Alma Louise Van Syckel, to the Cross Bill of Juan José Arsuaga, José B. Arsuaga, Pedro Arsuaga and Nicasio Arsuaga, as copartners under the name of Sobrinos de Ezquiaga, some of the defendants in the original bill of complaint,

These defendants, complainants in the original bill, now and at all times hereafter saving to themselves all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and other imperfections in said Cross Bill contained, for answer thereto, or to so much and such part thereof as these defendants are advised it is material or necessary to make answer unto, answering say:

I.

These defendants deny that upon the assignment and transfer of the mortgage upon the estate "Santa Cruz" from Paul Van Syckel to P. Van Syckel & Co., described in said cross bill, it was intended by said Paul Van Syckel and understood between him and said cross-complainants that said firm of P. Van Syckel & Co. should acquire all of the rights and title of every kind and character, whether as mortgagee or lessee, which the former had in said plantation, or that any such understanding was the basis and consideration of the partnership formed between them; but on the contrary allege that the express agreement was that the leasehold rights of said Paul Van Syckel were in no way affected by the transfer of said mortgage as was shown by subsequent transactions touching said lease which will be hereinafter more fully set forth.

Further answering, these cross-defendants deny that the recognition of said leasehold in the agreement of July 27, 1901, was made for the purpose of strengthening the position of said firm of P. Van Syckel & Co. in any litigation with Emilio Montilla, or that any such recognition did or could have had the effect suggested; and they further deny that there was any agreement or understanding between said firm and Paul Van Syckel that the rights of said firm in said

52 plantation "Santa Cruz" by virtue of the assignment of said mortgage thereon and its foreclosure should be unrestricted by the terms of said leasehold, or that such assignment and foreclosure could legally have any such effect, or that any such verbal understanding as alleged could have taken away from said Paul Van Syckel and transferred to said firm any such unrestricted right and title as is claimed by said cross bill.

II.

Answering the second paragraph of said cross bill, these cross-defendants deny that by the foreclosure proceedings conducted by said firm of P. Van Syckel & Co. and the right and title adjudicated to them thereunder said plantation became the property of said firm without any limitation or reservation whatever in favor of said Paul Van Syckel, but on the contrary aver that the rights belonging to said Paul Van Syckel by virtue of said leasehold were expressly recognized and reserved by said District Court of San Juan and the title under said foreclosure adjudicated to said firm of P. Van Syckel & Co. subject to said leasehold rights; and that said firm has from the date of said adjudication continued to possess the same title to said plantation then and there adjudicated to it and no other or better title.

III.

Answering the third paragraph of said cross bill, these cross-defendants deny that by the foreclosure proceedings the firm of P. Van Syckel & Co. became the absolute owner of the plantation "Santa Cruz," or that said suit was brought for that object, if by the term "absolute owner" it is intended to allege that the leasehold rights of said Paul Van Syckel were thereby extinguished; and it is hereby alleged to the contrary that such an object could not have been legally accomplished by said suit, even had the same been intended. And these cross-defendants aver that, as said leasehold right remained duly recorded in the name of said Paul Van Syckel and was never released or assigned by him in any way whatsoever, the merger or confusion of rights alleged in said paragraph to have taken place was, and has always been, a legal impossibility.

IV.

Further answering paragraph four of said cross bill, these cross-defendants deny that the recognition of said leasehold interest in said Paul Van Syckel, either by the agreement of July 27, 1901, or subsequent thereto, had any relation to or bearing upon the successful defence of the suit brought by said Emilio Montilla as in said paragraph described, nor was there any agreement that said leasehold should be recognized between the parties only in the event that Montilla should be successful and the firm of P. Van Syckel & Co. be deprived of the dominion ownership of said plantation "Santa Cruz."

V.

Further answering the fifth paragraph of said cross-bill, these cross-defendants deny that at no time after the execution of the agreement of July 27, 1901, did said Paul Van Syckel claim said leasehold right, but on the contrary allege that on each occasion when said plantation was sub-leased up to the time of the formation of said "Santa Cruz Sugar Company" he appears as subleasing the number of acres of said plantation included in his original lease while the firm of P. Van Syckel & Co. appear as the lessors of the balance of said plantation only; and these defendants deny that said firm of P. Van Syckel & Co. have at various times, or at any time, leased said plantation without the intervention of said Paul Van Syckel as a party or have collected the entire rent therefor without accounting to him.

VI.

Answering the sixth paragraph of said cross bill, these cross-defendants say that it is true no mention is made of the lease of Paul Van Syckel in the instrument whereby the life of the firm of P. Van Syckel & Co. was extended for the very good reason that the foreclosure suit therein mentioned by which a mortgage credit had been converted into a fee title had in no way affected said leasehold rights, but the same remained exactly as they had previously been and had been expressly fixed by the separate agreement of July 27, 1901, aforesaid.

Further answering these cross-defendants say that, previous to the formation of the "Santa Cruz Sugar Company" as set forth in the original bill of complaint, said Paul Van Syckel abandoned his residence in Porto Rico and went to live near the City of Havana, Cuba; that ever after the time of the formation of said last mentioned Company his health failed so fast that he was advised by his physicians to give as little attention as possible to his business affairs and was in fact unable to attend to the same except in the most perfunctory manner; and that from that time to the time of his death he made no attempt to study or master the details of the statements sent him by the cross-complainants touching his interests in Porto Rico.

And these cross-defendants deny all manner of combination and confederacy wherewith they are by the said cross-bill charged, without this, that there is any other matter or thing in defendants' said cross bill contained material or necessary for these cross-defendants to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied is true to the knowledge and belief of these cross-defendants; all which matters and things these cross-defendants are willing and ready to aver, maintain and prove as this honorable Court shall direct, and pray to be hence dismissed.

PETTINGILL & LEAKE,
Solicitors for Cross-Defendants.

No. 453.

ADA E. H. VAN SYCKEL et al.

vs.

SOBRINOS DE EZQUIAGA et al.

Come now the complainants herein by their Solicitors Pettingill & Leake and file a replication to the answer of Sobrinos de Ezquiaga.

Journal Entry, November 16, 1907.

ADA E. HIRST VAN SYCKEL et al.

vs.

SOBRINOS DE EZQUIAGA et al.

Now come the defendants Sobrinos de Ezquiaga and file a replication to the answer of the cross-bill and a petition for the taking of the testimony orally before the Court.

Opinion.

(Filed July 31, 1908.)

ADA ELMIRA VAN SYCKEL et al., Complainants,

vs.

SOBRINOS DE EZQUIAGA et al., Respondents.

This suit has been pending a little more than a year. Its object is to settle the legal rights of the parties, so that an accounting can be had between them, and the concern involved which is a partnership, be finally dissolved and the property divided.

At the present time the only issue before us is to settle these rights,—the accounting and separation of the actual property to be done at a later date.

The complainants are the widow and minor children of the late Paul Van Syckel. The principal respondents are an old established business firm of the city of San Juan.

At the present time there is but one real serious question between the parties. It is, whether or not a certain lease of 279 cuerdas of land of a plantation known as Santa Cruz in favor of the deceased Paul Van Syckel, is still subsisting and in force. The contest as to this has been carried on positively and strenuously by each side.

The record consists of a considerable amount of oral evidence which was taken directly before the Court on April 14th, 1908 and succeeding days, and some other evidence taken in a former hearing in this Court, besides a lot of public documents, Insular Supreme

55 and District Court records, orders, judgments, decrees, etc., and printed briefs and arguments in other cases. Extensive written arguments and briefs by the respective counsel in this particular case are also before us.

In order to understand the issue, it is necessary to set out as briefly as may be, the transactions and facts out of which the controversy arises, which may be done about as follows:

For some time previous to the entering into the partnership with reference to which this litigation is pending, the husband and father of the complainants, Mr. Paul Van Syckel, a civil engineer by profession, was the agent of the Standard Oil Company in Porto Rico, and other places in the West Indies, and it seems was a man of some means and had business interests of his own.

In June 1897, he procured an indeterminate lease of nearly the whole of a plantation in the Bayamón district south of San Juan, Porto Rico, from its owner a certain Mr. Montilla, at a monthly rental of 105 pesos of the then current money, which under the Act of Congress afterwards passed fixing the value of such currency amounted to about \$63, U. S. gold. It is doubtful if the parties to this lease at this date had any idea that the Spanish-American war would shortly thereafter be a part of history, and hence property values in Porto Rico were much less than they were a few years later, after American occupation of the island and the inauguration of free trade with the United States.

Mr. Van Syckel, after the beginning of the war, no doubt realized the probable value this lease of his would soon have, and hence endeavored to have it recorded in the proper registry of property. On attempting to have this done, he was met with a refusal of the recorder because it seems that under the law of Porto Rico no lease could be recorded unless it had at least six years to run, and as the term of the one in question was not fixed, it could not be recorded. Thereupon in October 1899, Van Syckel went before a local Notary and executed some sort of an ex parte "public" instrument, by which he declared that he would hold said lease and pay the rent for six years anyway, but in terms reserved the right to hold it indefinitely thereafter. The Registrar of Property after a Court decision in that regard against him recorded the lease.

It further appears that the owner of this plantation Mr. Montilla, some years previous to the making of the lease to Van Syckel, had several times mortgaged the plantation to a certain Mr. Marxuach, and which mortgages had all been or were considered as consolidated into one, under date of August 9, 1894. This consolidated mortgage was outstanding and still unpaid at the time that Montilla made the indeterminate lease to Van Syckel.

It appears also that about the time Van Syckel secured the recording of this lease the owner of the plantation began to appreciate the fact that he had made a grave mistake in ever making such an instrument, and wanted to get rid of it. Therefore, as appears from the evidence adduced in subsequent litigation, in December 1899, Montilla, the owner of the plantation, and Marxuach, the holder of

56 this consolidated mortgage upon it, entered into a secret agreement by which Marxuach was to foreclose his mortgage and, if possible, buy in the property as he would have a right to do, and then hold it until Montilla could redeem it from him. Van Syckel shortly thereafter, and early in the year 1900, to prevent this from being done, brought a suit in the United States Provisional Court of the Island, and strange to say, secured a decree virtually holding as we see it, his lease to be a perpetuity, and also secured the right in that same decree to pay off the mortgage of Marxuach, and hold the same against Montilla, in addition to having the lease. Under this decree of the Provisional Court, Marxuach was forced to and did on March 16th, 1900, assign his mortgage for its face value of 11,697.65 pesos or \$7,918.59 gold, to Van Syckel who paid him that sum for it, and thus became the holder of the mortgage as well as the owner of this then and now alleged perpetual lease.

Shortly thereafter in June 1900, Van Syckel organized a new firm known as P. Van Syckel & Company. It was composed of the said Van Syckel himself on the one side, and the respondent firm of Sobrinos de Ezquiaga on the other. Its capital consisted of 30,000 pesos, of which each of the parties contributed one-half. Their partnership agreement shows the items that make up this capital in detail. Van Syckel turned in a plantation which he then happened to own known as "Plantaje" which he valued at 4148 pesos, or \$2488.80 gold. He also contributed this Montilla mortgage on the plantation "Santa Cruz" which at that date he valued at 11,724.77 pesos, or \$7034.86 gold. It is contended on the one side and denied on the other, that this item included the lease also. It is certainly a fact that this plantation was one of the principal properties used by the partnership thereafter in its business. Van Syckel also furnished a large amount of cattle and farm implements to this partnership. The business to be carried on was principally a dairy business which Van Syckel had theretofore been conducting alone on these two plantations. The other parties, Sobrinos de Ezquiaga, paid him 15,000 pesos in cash as their half of the contribution to this equal partnership, and the business was proceeded with.

It appears that Montilla was very much dissatisfied with the decision of the United States Provisional Court which forced the assignment of the Marxuach mortgage to Van Syckel, and with its decision virtually holding the lease to be a perpetuity. This all occurred as it appears on his default in that Court. He therefore at once began threatening to commence proceedings to have the same set aside or to attack it in some way, so as to get the mortgage back into the hands of his friend Marxuach, and in the next few years, there occurred a very strenuous and annoying amount of litigation in several courts between the parties as will be hereafter referred to.

Thereafter on July 27, 1901, there took place a transaction which is the bone of contention here. On this date Van Syckel and Sobrinos de Ezquiaga went before a local notary and executed a "public" Instrument between themselves, by which they affirmed and ad-

mitted that the lease of the plantation "Santa Cruz" from Montilla to Van Syckel should be considered as still alive and subsisting in favor of Paul Van Syckel alone and as having priority over the mortgage, without reference to Van Syckel's partnership agreement with Sobrinos de Ezquiaga. However, a couple of months thereafter in September 1901, the said Montilla not having in the meantime paid either the principal or interest on this mortgage, now so held by this new firm of P. Van Syckel & Company, they foreclosed the same under the then summary proceeding that obtained, and had the plantation adjudicated to the said firm, but secured in this decree a reservation of the leasehold-right on the 279 cuerdas of the plantation to Van Syckel alone. This decree excepted from the leasehold right 35 cuerdas of the plantation which although mentioned in the mortgage, was not included in the lease to Van Syckel.

It appears that Sobrinos de Ezquiaga, probably before, and certainly since the death of Van Syckel, which occurred December 27th, 1905, have carried on the two plantations that formed the real estate basis of the partnership of P. Van Syckel & Company but it also appears that they kept a separate account of the management expenses and product of each of the plantations "Santa Cruz" and "Plantaje."

It also appears that some time after the events we have just mentioned and in August 1905, an additional partnership was formed between this firm of P. Van Syckel & Company and the respondent Paul A. English, to cultivate sugar cane on the two plantations "Santa Cruz" and "Plantaje." This new firm was called the Santa Cruz Sugar Company, and its capital which consisted of \$10,000 was contributed in the proportion of 85% thereof by P. Van Syckel and Company and 15% thereof by the said Paul A. English, but the firm of P. Van Syckel & Company, under the terms of this new partnership kept exclusive actual control of the same. The new firm was to pay \$175.00 per month rental "to the party entitled thereto" but did not specify who such party was. This is the only connection the respondent English has with this litigation and it will therefore not be necessary at this time to further consider of his rights in the premises.

The litigation between Montilla on the one side and P. Van Syckel & Company, as a firm and Paul Van Syckel alone on the other, continued for several years, in fact from 1901 and 1905 inclusive. They instituted all sorts of proceedings against each other in the Insular Courts and harassed each other in many ways. Van Syckel was living in Havana, Cuba, most of this time and a great deal of his correspondence with Sobrinos de Ezquiaga and their attorney Eduardo de Acuña during this period is in evidence, and the conclusion from it all is irresistible that the feeling between Van Syckel at least, and Montilla, was extremely bitter and that Van Syckel wanted everything done that could be done to silence Montilla and discourage his litigation and not only did these letters suggest retaliations and attacks on Montilla, but Van Syckel gave full authority to de Acuña and took all his advice as to the doing of everything that might tend to enable Van Syckel's side to prevail over Montilla.

Finally after years of this sort of legal turmoil and strife, and on December 30 1905 which was in fact two or three days after Van Syckel had died, de Acuña, not knowing of the death, and acting under a power of attorney of date in the year 1901 from Van Syckel to Mr. Arzuaga of the firm of Sobrinos de Ezquiaga, negotiated a complete settlement between P. Van Syckel & Company on the one side, and Montilla on the other, by the payment to the latter by P. Van Syckel and Company of the sum of \$2,500, in cash. At this time Montilla in addition to several other proceedings against Van Syckel and respondents, had an appeal pending against the foreclosure or adjudication of the consolidated mortgage, from the decision of the Supreme Court of Porto Rico to the Supreme Court of the United States. By this settlement the parties dismissed all their several suits against each other which were then pending including the appeal to the Supreme Court of the United States, each paying their own costs, and the matter as far as that phase of it was concerned was ended.

The respondent Mrs. Van Syckel for herself and the children now asserts, and her counsel vehemently argues that when an accounting is had with Sobrinos de Ezquiaga, and the property belonging to the firm of P. Van Syckel & Company is accounted for, and about to be divided between the parties, that herself and the children are entitled to thereafter continue as the lessees of the 279 cuerdas of this plantation Santa Cruz, indefinitely, under this indeterminate lease, paying Sobrinos de Ezquiaga as half owners in the partnership of P. Van Syckel & Company which now owns the fee to the land mentioned, one-half the rental fixed in the lease, that is to say \$31.50 gold per month rental therefor, and this, notwithstanding the fact that Sobrinos de Ezquiaga are as stated since the foreclosure the actual owners of a half interest in the land themselves. In addition to this she claims that during all the time this partnership of P. Van Syckel & Company, has existed she is entitled to have credited to herself and the children all this monthly rent to the time of the foreclosure and half the rent since that time, that is \$63 gold per month at first and \$31.50 gold per month since; and all this because she insists that this lease not only has never been cancelled, merged or substituted either by the making of the partnership agreement or the foreclosure of the consolidated mortgage, but that by the direct notarial "public" acknowledgment of her husband and these respondents Sobrinos de Ezquiaga, and by the direct decrees of the District and Supreme Courts of the Island in litigation about the same, it is still subsisting and in force.

On the other hand, Sobrinos de Ezquiaga and their counsel quite as vehemently contend and insist that the Montilla lease to Paul Van Syckel was intentionally and by agreement of the parties merged in the partnership of P. Van Syckel & Company, and then and there ceased to have force in the sense now here contended for by Mrs. Van Syckel, and that in consequence, nothing remains to be done but to have an accounting as to the partnership affairs generally, and a division of the property, which may be done by actually dividing it in specie, or having it sold and

the proceeds divided as may be proper under the law and the findings of the Court.

Then respondents further assert that the reason for the making of the public instrument of acknowledgment of July 27th, 1901, by which Marxuach's mortgage then owned by P. Van Syckel & Company, was postponed and rendered subject to the lease, was because the firm of P. Van Syckel & Company, at that time, had great fear that Montilla might succeed in getting the decree of the United States Provisional Court holding the lease good indefinitely and forcing the assignment of the Marxuach's mortgage to Van Syckel, set aside and that he might succeed in reversing the Insular Court's decision that the lease was recordable, and that they wanted the firm to be in a position to catch things going or coming, and to hold the property, under this lease in case such assignment of the mortgage and the other proceedings and decision were in fact set aside, or in case Montilla came forward with the money and paid off the mortgage; and that such acknowledgment of the priority and continuing subsistence as against the firm of the lease, had no other object than that of the protection of the interests of the firm of P. Van Syckel & Company. That it was done for the firm's benefit by Van Syckel to protect himself and the firm as he had a right to do, and was not made to enable Van Syckel to get any advantage over the firm.

To this, counsel for Mrs. Van Syckel replies, denying the same of course, and asserting that if this is true, then the instrument must have been made to deceive the Courts of the Island and in such case no court of equity will listen to such a claim because the same is immoral, and soils the hands of those who make it; and that no court of equity will let those making it, take advantage of it. On the other hand respondents with equal emphasis reply that there was nothing wrong or that involved moral turpitude in such act of asserting to the world that this lease still had force for the purpose indicated, but that if there is anything wrong about it, which they vehemently deny, then Mrs. Van Syckel as representing her husband cannot be permitted by a Court of Equity to take advantage of it as she stands as to it with only the same rights as her husband would have were he alive, and that in such a case the parties would be in *pari delicto*. They further urge that because there are many other equities between the parties, this court will not refuse relief as to the whole case even on that ground.

They further say that it would be unreasonable to now hold this lease as subsisting because they contend all the acts of the partners show that it was not to be so considered, and the books and accounts were kept in accord with that view, and because at any rate it was extinguished two or more months after it was made in the foreclosure or "adjudication" proceedings of the prior consolidated mortgage etc.

During the trial a bitter contest arose about the right of the witness Eduardo de Acuña, who was counsel for both sides of the firm of P. Van Syckel & Company at the time of the occurrence of all the transactions here mentioned, to testify, now

that Paul Van Syckel is dead, against his interest or the claim of his estate in these proceedings. After a full hearing as to that matter, we held that the circumstances developed did not show that the communications about which Acuña was asked here were privileged, because the dispute is now about matters as to which he was at the time the joint counsel of the parties, and the dispute is now between themselves, so his evidence could even be compelled by either party and so it was permitted to go in the record.

The pleadings as finally settled after pleas, demurrers, applications for a Receiver, motions, etc., and many hearings on the same, are simply a bill setting forth in detail the transactions between the parties as here set out, and an answer and cross-bill by respondents—the former admitting and denying the allegations of the bill as here indicated, and the cross-bill asserting the intent of the parties also as indicated as to this lease, and praying for affirmative relief in the premises, and that the lease be held to be merged in the partnership and foreclosure as was intended, and that the same be held to have no further force or effect. Proper replications were filed to both the answer to the main bill, and the cross-bill.

The partnership between the parties has some considerable time since expired even by limitation, as well as by the death of Paul Van Syckel, and so both parties are in accord in the request for a decree that the same should be settled by a proper accounting and division of the property to take place after the Court has settled the issue here as to this matter of the lease.

The evident bitterness with which the issue here is contended for by both sides, has forced us to make an unusually careful examination of all the testimony, the written briefs and arguments, and of all the authorities referred to, as well as of the very large number of exhibits in the case.

The lease itself is peculiar, and to a considerable extent apparently unilateral. It provides that Van Syckel can give it up any time on a couple of months' notice to Montilla, while on the other hand it provides that so long as Van Syckel pays the rent he cannot be disturbed save on Montilla paying him damages, at least that is the inference we draw from it. It is not for us here to criticize the default decree of our predecessor the United States Provisional Court of the Island, of which, by the way counsel for complainant here was the learned law Judge, as well as having thereafter been of counsel in some portion at least of the controversies between Van Syckel and P. Van Syckel & Company against or at the suit of Montilla in the Supreme Court of the Island. We must therefore consider the lease as in force at the time mentioned. However, when the trouble began it was carried on vigorously on both sides and much litigation ensued. Montilla resisted the recording of the lease and took an appeal from the decision of the Insular District Court to the Supreme Court of the Island, on that question. He also resisted the foreclosure or adjudication of the consolidated mortgage as stated and took an appeal from a decision against him as to that.

61 The inference to be drawn from the testimony of the witness Eduardo de Acuña, who was attorney for both parties at the time, is that it was at his suggestion that Sobrinos de Ezquiaga and Van Syckel entered into this public acknowledgment by which the mortgage was "postponed" to the lease. In this he is corroborated by several documents, facts and circumstances in the case. De Acuña further testifies that he fully explained the whole situation to both Van Syckel and Sobrinos de Ezquiaga and that his object and his only object which he claims was thoroughly understood by all of the members of the firm of P. Van Syckel & Company, was that they should make this acknowledgment as between themselves, not with the object of then or ultimately leaving any interest in the lease in Paul Van Syckel alone, but to enable Van Syckel to hold the land for the firm in case of the success of Montilla in any of his suits against them, or in case he should actually pay off the consolidated mortgage then owned by P. Van Syckel & Company. He points out that this public acknowledgment took place several months before the actual foreclosure of the consolidated mortgage by the firm against Montilla, and insists that there is nothing wrong about it in any way, but that it was only the assertion of a straight legal right, etc., and that Montilla had a complete remedy at any time before foreclosure by paying off the mortgage and getting the lease cancelled if he could.

Counsel for complainants here, criticizes this testimony severely, and points to it as unreliable, because he contends it confesses an act that was intended to deceive the District and Supreme Courts of the Island, if De Acuña's present statement is the true explanation; and that it induced those Courts in all their decisions, notices of sale, etc., to specifically hold the lease as still subsisting, etc. The other side answers this by pointing out that the partnership was strictly the business of Van Syckel and Sobrinos de Ezquiaga, and had nothing to do with the fight between Van Syckel and Montilla as to the lease.

The citation of authorities submitted by counsel for complainants has driven us to an exhaustive examination as to whether or not this was such an illegal or immoral transaction as that a Court of Equity will not lend its aid to either or at least to the guilty party in its enforcement. We find the rule to be undeviating that Courts of Equity will not aid guilty parties if a contract is immoral or against public policy. However, we find that it is often a very difficult question to say when a contract or transaction comes within the purview of this salutary rule of Courts of conscience.

Having a full appreciation of the ethics that should govern counsel in the conduct of all litigation in their advise to their clients, we have examined into this question to see whether under all the circumstances the making of this public acknowledgment as to this lease is of the character indicated, and while we are forced to confess that it appears to approach the line closely, we are not able to say that any direct intentional deceit was actually practiced on the Courts, or in the last analysis that any fraud was practiced on Montilla if the lease was assignable under the Statute while Van Syckel lived. We have examined the printed briefs sub-

mitted to the Supreme Court, carefully, to determine this. Why did not Van Syckel have the right to protect his own possession of the land or his sale or assignment to the partnership in this manner if he thought it was necessary? It must be remembered also that there was no secret about the partnership, it was constituted by a public instrument and Mr. Montilla had opportunity to have notice of it as well as the postponing instrument, so we cannot see how he was deceived or how the courts having actual notice of both could affect the rights of Montilla or prevent bidders at the sale of the property under the foreclosure or adjudication of the consolidated mortgage, because it appears to us that if the lease was good at all and it had at that time been held to be good its benefits could be claimed by Van Syckel either individually or as a member of the firm of P. Van Syckel & Company.

We do not regard the facts here as making this case at all parallel to the case of *Wheeler vs. Sage* 1 Wallace 530, where a conspiracy was entered into to secure the title to valuable real estate of an insolvent debtor at the expense and sacrifice of his creditors, and which conspiracy was properly condemned by that august Tribunal.

We have found many cases that approach the line as closely as this does, where the Courts did not refuse relief.

We can plainly see from the items enumerated in the articles of partnership of P. Van Syckel & Company that this consolidated mortgage was put in as a part of the assets of the firm to make up the total of 30,000 pesos, and Van Syckel sold a half interest in those assets, including the two plantations and a lot of movable property, for half of this sum, that is 15,000 pesos to Sobrinos de Ezquiaga which he received in cash from them.

We fail to see the force of the claim that Van Syckel put in a mere "credit" or mortgage debt, as an asset of this firm, the business of which was to carry on a dairy, and it looks ridiculous to say that these respondents simply invested in half of an interest bearing mortgage. Van Syckel himself had been using this ranch for some time previous, for this same purpose as a dairy ranch and the firm continued to use it for the same purpose for some time thereafter. The firm could not ordinarily promote a dairy business by simply owning a mortgage which might be paid off any moment, so it seems to us to be plain that Van Syckel intended to include the possession which included the lease in the assets of the firm.

Counsel for complainants contends that his position is sound because after the making of this instrument postponing the mortgage to the lease, and in November 1902 when portions of this Santa Cruz plantation were sublet to a stranger, Van Syckel in addition to the lease of the firm, executed a sub-lease himself to the tenant for these 279 cuerdas of land. We can well see how this was necessary because of the existence of this postponing instrument, and we can well see how the same could not at that time have been avoided, because Montilla had appealed from all previous Court decisions against him as to the recording of the lease and the foreclosure or adjudication of the mortgage. The language used in a later lease to the Santa Cruz Sugar Company plantation, that the rent shall be paid "to the person or corporation which at any time shall

appear to be the owner or lessee thereof" but further confirms us in the belief that as between the parties themselves *Sobrinos de Ezquiaga* and Paul Van Syckel understood the object of the making of this postponing instrument to be exactly as the witness de Acuña testified it was. Therefore, as this is a direct proceeding to have this postponing instrument cancelled and as we firmly believe that the evidence overwhelmingly shows it was never intended to have any force against P. Van Syckel & Company or *Sobrinos de Ezquiaga*, we do not see how we can avoid granting the relief. Think of the position all the parties will be in if relief is denied!

Counsel for complainants seems to fully appreciate this, because he suggests that the Court ought to refuse the relief, and order a division of the assets with that lease still in force, and then oblige *Sobrinos de Ezquiaga* to become complainants and bring a subsequent suit to cancel the lease, because of all of the facts set out above, and let them take their chances in that way.

We think with all due respect, that this is evading the question, and would result only in unnecessary delay and additional litigation and complications when the whole matter can and ought to be settled on the pleadings here.

All of the litigation about this lease occurred at a time when the courts could well hold it to be in force, that is within the first six years after its date, while it is doubtful if any court would hold it in force now. It will be remembered that on December 30th, 1905, all litigation between the parties was ended and P. Van Syckel & Company by the payment of \$2,500, to Montilla became the owners of this entire plantation free from every claim against it unless this lease is outstanding. It is of course true that this latter sum was paid by the firm after the death of Van Syckel, but the result inured to the benefit of his estate.

There is not a word of evidence in the case which shows that P. Van Syckel & Company ever paid any rent to Paul Van Syckel for this lease, or have ever given him any credit for any such rent, or that Van Syckel ever asked the firm to so give him credit for any rent, although it is in evidence that *Sobrinos de Ezquiaga* sent Van Syckel numerous statements of their accounts of the firm's business while he was living in Cuba.

It is undoubtedly true as testified by Mrs. Van Syckel, and the witnesses Paul and Aden English that Mr. Van Syckel several times during his life said in their presence and hearing that he placed great value on the lease in question and on the postponing instrument. Of course he did as well he might under all the circumstances, as those instruments until directly attacked gave him great *prima facie* advantage in all his litigation.

We fully agree with the doctrine laid down by the Supreme Court of the United States in *U. S. v. Maxwell Land Grant Company* 121 U. S. 381, that the general rule is, that when in a Court of Equity it is proposed to set aside, to annul, or to correct a written instrument for fraud or mistake in the execution of it, the testimony under which it is done must be clear, unequivocal and convincing, etc.; but we think that the evidence in this case

is clear, unequivocal and convincing, and is wholly inconsistent with the claim that this lease as between the parties was to have life in their accounting during or after the date of the partnership. This is so plain to us that nothing but the high standing of counsel making it and his coupling it with an intimation at least of unprofessional conduct on the part of the party who advised it, induces us to give it a second thought.

The overwhelming weight of the evidence in the case, shows that Paul Van Syckel was just as prominent and even a much more active party than Solrinos de Ezquiaga were, in all defense against, or attacks upon Montilla. A reading of the correspondence that is in evidence will convince any one of this. What would be the position of Van Syckel here, if this was a suit by himself in his life time to collect rent on account of this lease and a plea to the complaint should be interposed setting up all the facts and circumstances set out in the present cross-bill, and submitted by the proofs here? How can his heirs be in any better position?

Counsel for respondents insists that nothing in the whole transaction involves moral turpitude, that Mr. Van Syckel was an honorable man and that neither he nor respondent wanted or would take any undue advantage of the other.

Counsel for complainants of course agrees that Mr. Van Syckel was an honorable man, and for that reason, he also insists that there was nothing wrong about the making of the postponing instrument, and insists that it was and is a legitimate exposition of the intention of the partners and meant just what it said, and that it became, was and is a property asset of Van Syckel and his estate.

After carefully looking over the whole situation we are utterly unable without doing violence to our judgment, to agree with the contention that this postponing instrument was intended to inure to the profit of Van Syckel himself as against the firm. It is our opinion that Mr. Van Syckel sold a full half interest in his dairy business and all that constituted it, which included every right he had to all property concerned for 15,000 pesos to respondents Solrinos de Ezquiaga. Neither can we see how it would profit Mrs. Van Syckel very much at this time to hold that this lease is still in force. It would simply result in delay and in further complications while a suit was being carried on to cancel it, for we cannot see how it could in any event have life for more than six years, or at all events after Mr. Van Syckel's death. In our opinion with all due deference to counsel for complainants, on the facts before us it would be preposterous to hold that now when this partnership is ended Solrinos de Ezquiaga must give up their half of the land which they bought and paid for, indefinitely to Mr. Van Syckel's heirs at a rental of \$31.50 per month.

Therefore for all the reasons set forth in this opinion, a decree will be prepared and entered finding the issues as to this lease for the respondents, and that the said postponing instrument has no
 65 force or effect between the parties, and that the said instrument and lease shall be cancelled and considered as of no
 effect, and that an accounting must be immediately had between the

parties, thereafter to be followed by a winding up of the concern and a division of the partnership property in specie as far as may be, or that the same shall be sold in whole or in part if the division in specie is found to be impracticable, to the extent that it shall be so found, and that thereafter a commissioner will be appointed by the Court for the purpose of recommending a division if the parties shall not mutually agree upon a division.

The costs up to the time of the filing of this opinion, owing to the circumstances will be taxes and paid in the proportion of one third thereof to and by the complainants and two thirds to and by the respondents and cross-complainants. Thereafter to the end of the litigation the costs shall be taxed and paid as the Court shall hereafter determine to depend largely on the question as to which side shall be at fault in the accounting.

From the Court's knowledge of the case, it is of the opinion that complainants will scrutinize the accounting with great care, and therefore hopes that respondents who have had charge of the property during all these years, will facilitate such accounting and render the same fully and promptly in detail, without overcharge or evasion of any kind or character, to the end that the same may be properly carried forward and this litigation ended, and it is so ordered. The case is retained for all necessary purposes.

B. S. RODEY, *Judge*.

Decree.

(Filed August 7, 1908.)

ADA ELMIRA HIRST VAN SYCKEL et al.

vs

SOBRINOS DE EZQUIAGA et al.

This cause came on for final hearing before the Court on the 24th day of April, 1908.—Complainants being present by their solicitor, N. B. K. Pettingill, and the Defendants, composing the firm of Sobrinos de Ezquiaga, by their Solicitor, Francis H. Dexter. Defendant Paul English was present in proper person.

After hearing the testimony of all the witnesses, and considering all of the evidence herein, as well as the arguments of Counsel, the Court, on the 31st day of July, 1908, entered its opinion finding the issues herein in favor of the defendants, Sobrinos de Ezquiaga, in the manner hereinafter to be stated, and in pursuance of such opinion the following decree is entered on this the 7th day of August, 1908, at a session of this Court held in the City of San Juan, it being the April Term, 1908, thereof:

I.

The Court finds, adjudges and decrees that the partnership or mercantile societies "Santa Cruz Sugar Company" and "P. Van Syckel & Company" have expired by the limitation of their re-

spective Articles of Co-partnership, as well as by operation of law; that in the said firm of P. Van Syckel & Co. Complainants, as the legal heirs and successors of Paul Van Syckel, deceased, are entitled to one-half ($\frac{1}{2}$) interest, and that Defendants, Sobrinos de Ezquiaga, are also entitled to a one-half ($\frac{1}{2}$) interest,—Complainants, and Defendants Sobrinos de Ezquiaga, respectively, being each entitled to one-half ($\frac{1}{2}$) of all of the assets of the said firm and subject to one-half ($\frac{1}{2}$) the liabilities thereof; that the said firm of P. Van Syckel & Company is entitled to an Eighty-Five Per Cent (85%) interest in the assets of the Santa Cruz Sugar Company, and Defendant Paul English is entitled to a Fifteen Per Cent (15%) interest therein, the said P. Van Syckel & Company and the said Paul English being entitled to Eighty Five Per Cent (85%) and Fifteen Per cent (15), respectively, of the assets of the said Santa Cruz Sugar Company, and responsible in the same proportion for its liabilities.

II.

The Court finds, adjudges and decrees that the said firm of P. Van Syckel & Company is the owner of the farm known as "Santa Cruz" consisting of 314 cuerdas of land situated in the jurisdiction of the Municipality of Bayamón, Porto Rico, Barrio of Juan Sánchez,—Bounded:

On the East by the Hacienda "Caridad," which formerly belonged to Don José Esteban Berrios, separated therefrom by the River Bayamón;

On the North by the Hacienda "Santa Bárbara," of Don Miguel Lopez;

On the West by the town of Bayamón and lands of Don Juan Basilio Nuñez; and

On the South by the small island in the river (Islet) belonging to the said Don Juan Basilio Nuñez.

III.

The Court finds, adjudges and decrees that the lease executed on the 23rd day of June, 1897, by Emilio Montilla y Valdespino to the said Paul Van Syckel, before the Notary Mauricio Guerra, for 279 Cuerdas of the said farm "Santa Cruz," which said lease is recorded in the Registry of Property of San Juan at page 158 (vuelto) Tomo, II, of Bayamón, Finca 78, Duplicate, Fourteenth inscription, is without legal force or effect and ceased to exist because of the said farm "Santa Cruz" having been awarded to the said firm of P. Van Syckel & Company by the adjudication of the District Court of San Juan, Porto Rico, on the 27th day of November, 1901, and because the Court finds that the said Paul Van Syckel during his

lifetime agreed, by his partnership and otherwise, with Defendants Sobrinos de Ezquiaga that the said firm of P. Van Syckel & Company should be the sole and exclusive owners of the said farm "Santa Cruz," free and clear of any claims upon the part of the said Paul Van Syckel by reason of the lease aforesaid,

and the inscription of said lease shall be cancelled in the Registry of Property.

IV.

The Court finds, adjudges and decrees that the so-called Deed of Postponement, executed between the said Paul Van Syckel and Defendants Sobrinos de Ezquiaga on the 27th day of July, 1901, before the Notary Santiago Palmer, of San Juan, Porto Rico, is without legal force or effect, since it was executed by and between the said parties for a common purpose, which the Court finds to have been lawful, for the protection of the title of the said P. Van Syckel & Company to the said farm "Santa Cruz"; and the Court finds that it was so understood and agreed by and between the said parties that it was not to be given force or effect as between them or as against the absolute title of P. Van Syckel & Company to the said farm "Santa Cruz" independent and free from the lease hereinabove referred to, should the Montilla mortgage be thereafter foreclosed and P. Van Syckel & Company become the purchasers of the property.

For which reasons the Court orders, adjudges and decrees that the said Deed of Postponement, executed, as aforesaid, on the 27th day of July, 1901, be, and the same is, hereby cancelled and for naught held.

V.

The Court orders, adjudges and decrees that a liquidation be immediately made of the accounts of the said firm of P. Van Syckel & Company and the Santa Cruz Sugar Company, in accordance with the findings of this decree; that Defendants Sobrinos de Ezquiaga, who have had the administration of the said firms and the assets and business thereof, and have kept all of the accounts, shall within five (5) days from the entry of this decree, bring the accounts of the said firm down to date, supplementing the accounts and statements already rendered, so as to present a true and faithful accounting of the affairs of each of the said firms to such date. Upon the presentation of such additional or supplemental accounts the Complainants shall, within five (5) days thereafter, present such objections thereto as they may desire, which objections will be thereafter heard and disposed of by the Court.

Upon the final approval of the accounts a supplemental order or decree shall be entered by the Court herein fixing and determining the amount of credits to which each party, respectively, is entitled, and also the amount of debits for which they are, respectively liable, and will enter in such order or decree the amount to be paid as a balance by either party to the other, or order a division of all assets other than the real estate as herein provided.

VI.

The Court orders, adjudges and decrees that as to the real estate belonging to the said firm of P. Van Syckel & Company, consisting of the said farm "Santa Cruz" and the farm "Plantaje," referred to

in the pleadings herein, a division thereof shall be made, if the same is practicable and can be accomplished without impairing the value of the said properties or depreciating them or the segregated portions thereof, considering the uses to which the said properties as they now stand can best be applied. If the parties cannot agree upon such a division, or as to whether or not a division in kind is practicable, the Court will appoint a Commissioner to examine the said properties and report as to the practicability or advisability of making a division in kind, and if the Court should be of the opinion, after hearing the parties, that such division in kind can be made without prejudice to the properties or to the interests of the parties herein, it shall require and order the said Commissioner to make such division upon terms which will be equal and just for the parties.

Should the Court, however, be of the opinion that such division in kind is not practicable or desirable, or that it could not be made with equality or justice to the parties, then the said farms shall be offered for sale at public auction, notice thereof being given of the time and place of said sale, such notice being published at least once a week for a period of four weeks in a newspaper of general circulation printed in the Spanish language in the City of San Juan, Porto Rico, and in the event of such sale the Court reserves the right to name the Master to conduct the same, and such sale shall be approved by the Court before a deed shall be executed to the purchaser.

In the event of such sale the proceeds thereof, after deducting all proper costs and charges, shall be divided equally between the Complainants and the Defendants Sobrinos de Ezquiaga.

VII.

It is further ordered, adjudged and decreed that the costs of this action up to the present time shall be paid in the proportion of one-third (1/3) by complainants and two-thirds (2/3) by Defendants Sobrinos de Ezquiaga, but that the costs from this time on shall be taxed in accordance with the law, unless otherwise ordered.

B. S. RODEY, *Judge*.

69 *Findings of Fact and Rulings Upon Evidence.*

(Filed August 25, 1908, as of August 8, 1908.)

No. 453.

ADA E. H. VAN SYCKEL et al.

vs.

SOBRINOS DE EZQUIAGA et al.

A final decree having been heretofore entered in this cause against the complainants and in favor of the defendants Sobrinos de Ez-

quiana, and the said complainants having petitioned for and been allowed an appeal from said final decree to the Supreme Court of the United States, and said complainants now applying for findings of fact in said cause in accordance with the provisions of the statute of the United States in such case made and provided, the Judge of the court aforesaid does hereby certify the following as the facts upon which the final decree heretofore entered herein was based.

I.

During and prior to the year 1894 one Emilio Montilla y Valdespino was the owner in fee of a certain plantation in the municipality of Bayamon within this District, described as containing 314 acres, more or less; and on the 9th day of August of said year 1894 said Montilla executed a mortgage, which was a consolidation of several previously existing mortgages, in favor of one José Marxuach upon the whole of said plantation for the principal sum of 11,000 pesos, provincial money—the value of the peso being fixed by Congress after the American occupation at 60 cents in gold—and the lien of said indebtedness was duly fixed by recording.

II.

In the year 1897 Paul Van Syckel, whose rights have since passed by inheritance to the complainants, entered into a contract with the said owner, Montilla, to lease from him for an indeterminate period that part of said plantation consisting of 279 acres, the remaining 35 acres being at that time already under lease to a man named Gutiérrez del Arroyo. The following is a correct translation of the body of said contract of lease:

"They have in my judgment the necessary legal capacity to make the present contract of lease and, assuring me that they are in the full exercise of their civil rights, without my knowing anything to the contrary, they declare as follows:

1. That the former has inscribed in the registry of property of this district on the back of page 114 of the second volume of Bayamon by right of purchase made from his mother, Doña Juana Valdespino Bey, the title of ownership of the farm described as follows: (here follows description)

70 2. That they have agreed upon the leasing or rental of said farm to the second named party for the amount, terms and period of time which will be hereinafter stated. Emilio Montilla y Valdespino carrying it into effect by means of this public document, stipulates:

First, that he leases the above described farm to Paul Van Syckel with the deduction of thirty five acres which he has rented prior to this contract to Don Rafael G. de Arroyo, resident of Bayamon, which are situated at the northern part of the farm on the road leading out of the town.

Second, the lessee, Mr. Van Syckel, formally agrees to pay to the owner by way of rental the amount of 105 pesos, provincial

money, which will be paid monthly without excuse, pretext or discount whatsoever, at the end of each month beginning with the first of July next.

Third, it shall be for the exclusive account of Mr. Montilla to pay the taxes upon the real estate out of the rent which he receives and for the account of Mr. Van Syckel to pay those which may be imposed upon the business which he may carry on within the same.

Fourth, Mr. Arroyo having acquired by purchase from the lessor, Mr. Montilla, twenty five hundred weight of tobacco which is stored in one of the rooms of the factories of the rented farm, Mr. Van Syckel will allow Mr. Arroyo the provisional use of said room until he disposes of said product.

Fifth, the lessee may use the factories of the farm to store in them all crops which the rented farm may produce by its cultivation, exception being made of sugar cane.

Sixth, as Mr. Van Syckel pays a monthly rental in order to make every possible use of the farm, he is authorized to sell the products, firewood, native timber, gravel and anything else which will not redound to the detriment of the farm.

Seventh, as this contract has no fixed term or duration, it is a distinct condition that as long as Mr. Van Syckel fulfills the payment of the monthly rental, Mr. Montilla is obliged to respect this contract without right to rent to any other person or to sell, while it is rented, under penalty of payment of indemnity to the lessee, Mr. Van Syckel, for the damages and losses which may be caused him.

Eighth, it is an express and decisive condition that the lessee may not give up the farm which he has under lease without giving two months' notice previously to the owner, Mr. Montilla.

Under which conditions the parties appearing formulate the present contract, to the carrying out of which they therefore are bound.

III.

As the said Paul Van Syckel afterwards desired to record the above contract of lease, and found himself unable to do so without fixing a definite term, he went before a Notary Public on the 21st day of October, 1899, and executed an ex parte document drawn by said Notary, a correct translation of the body of which is as follows:

71 "He says that upon the 23rd day of June, 1897, and by document made before the present Notary, he made a contract of lease of the farm named "Santa Cruz," situated in the municipal district of Bayamon, ward of Juan Sanchez, with the owner thereof, Don Emilio Montilla, in which contract of lease the duration of the contract is not fixed, it being left to the will of the lessee that he might continue the lease of this property as long as he may desire, providing he paid with punctuality the stipulated rental of 105 pesos current provincial money; and desiring today to secure in efficient form and to guarantee the right which he acquired by means of that contract of lease, its term of duration

being at the option of the lessee, by the present document he agrees that he binds himself to the continuance of said contract and the fulfillment of the obligations which he undertook in the same, for a period of more than six years, which will begin to run from the date of its execution, without its being understood that he renounce the right which the said contract gives him to continue in the rental of the property, when his six years may expire, providing always that he continue paying the stipulated rental and fulfilling the other conditions which he undertook in said contract."

IV.

Upon presentation to the Registrar of Property by said Paul Van Syckel of the above contract of lease of June 23rd, 1897, and the Notarial document of October 21st, 1899, above cited, said Registrar still refused to record said leasehold right, but said Van Syckel appealed from his decision to the courts which decided against the Registrar and ordered him to record the same, which was thereupon done.

V.

In or about the month of December, 1899, the said Montilla, owner of said plantation, in order to free his property from Van Syckel's lease, entered into a secret agreement with Marxuach, the owner of the mortgage thereof, whereby Marxuach was to foreclose his mortgage and, if possible, buy in the property as he would have a right to do, and then hold it in trust for Montilla until the latter could redeem it from him. In order to prevent that result said Van Syckel brought a suit, early in the year 1900, in the then United States Provisional Court under the Military Government of this Island, setting up his leasehold rights and asking the right to redeem from the mortgage for the protection thereof; and in that suit secured a decree by default virtually holding his lease to be a perpetuity and allowing him to pay off the mortgage of Marxuach and hold the same against Montilla, in addition to having the lease.

VI.

Under the above decree of the United States Provisional Court the said Mortgage, Marxuach, on March 19, 1900, assigned his mortgage to said Van Syckel upon the receipt from the latter of its then face value, to wit: 11,697.65 pesos, and this assignment to Van Syckel was also duly recorded. From the above date, therefore, the said Paul Van Syckel became the owner both of the said mortgage on the whole 316 acres of the plantation, and of the lease hereinbefore described upon the 279 acres thereof.

VII.

On the 1st day of June, 1900, the said Paul Van Syckel and the defendant firm, Sobrinos de Ezquiaga, entered into a contract of partnership, adopting the firm name of P. Van Syckel & Company.

This contract was executed before a Notary, and a correct translation of the body of said Partnership agreement is as follows:

"The parties state:

"First, that Paul Van Syckel is the owner of the following rural property, situated in the barrio of Sabana Seca of the municipality of Toa Baja, of the Registry of Property of this city, having an area of two hundred and seven acres and forty-three hundredths of land, equivalent to 89 hectares 53 ares and 51 centares, bounded on the east, north and west by lands of Mrs. Gonzalez y Beltran and on the south by lands of Antonio Monroig.

Title: That said property was acquired by him by purchase from Mrs. Carmen Gonzalez y Beltran, as per instrument dated December 21st, 1899, executed before the Notary Mauricio Guerra Mondragon y Mejias, recorded in the Registry of Property at folio 241 of Vol. 3 of Toa Baja, property number 155, registration 1st.

Value: That according to the aforesaid title the property hereinabove described is worth 448 pesos, special money of Porto Rico, known as provincial currency.

Liens: That also, as appears from the aforesaid title, the property is free from all liens and encumbrances.

Mortgage credit, of 11,697 pesos and 65 centavos special current money of Porto Rico, on the sugar plantation named "Santa Cruz" situated in the barrio Juan Sanchez of the municipality of Bayamon, in the Registry of Property of this city, with an area of 314 cuerdas of land, equivalent to 113 hectares, 41 areas and 46 centares, which is bounded on the east by the plantation "Caridad" that belonged to José E. Berrios, divided by the Bayamon River, on the north by the plantation "Santa Barbara" of Miguel Lopez, on the west by the town, and lands of Juan Basilo Nuñez, and on the south by the said Mr. Nuñez.

Sources: That Emilio Montilla y Valdespino answers for the said mortgage credit and it belongs to him by cession that was made to him by José Eleuterio Marxuach y Echevarria, under instrument executed before me on the 11th day of March of the current year, recorded in the Registry of Property at folio 57 over, Vol. 19 of Bayamon, property number 79 duplicate, registration 15th.

Value: That the aforesaid credit if it be true that it is for the amount hereinabove mentioned, it has for the purpose of this contract, and without prejudice to the interest thereto accruing, a value of 11,724.77 pesos, current money of Porto Rico.

Liens: That likewise it is free from all obligations or liens.

73 Cattle, 11,118 pesos current provincial money in the value of the existing cattle, as appears in detail by the inventory which they have made and which will be attached at the end of this instrument.

Appurtenances, 1,879 pesos and 91 centavos of the same money, which, as it is also set out in the said inventory, is the value of the appurtenances therein stated in detail.

Cash, 1,111 pesos and 32 centavos, also provincial money, which amount is on hand and which appears in the aforesaid inventory. And therefore all of the above gives the following recapitulation:

Value of the cattle, as per inventory.....	11,118.	pesos
Value of the appurtenances.....	1,897.91	"
Value of the mortgage, described, on the plantation "Santa Cruz".....	11,724.77	"
Value of the rural property in Sabana Seca, hereinabove described.....	4,148.	"
Amount in cash.....	1,111.32.	"

Which said items make a total of..... 30,000.00 pesos

Division of the Capital.

Second, that with the capital hereinabove stated Mr. Van Syckel agrees with Messrs. Sobrinos de Ezquiaga upon the organization of a universal civil partnership for the purpose of engaging in the dairy business, and in the purchase of cattle, the aforesaid property becoming common property to the partners thereof, and in the proportion of 15,000 pesos for Mr. Van Syckel and 15,000 pesos for Messrs. Sobrinos de Ezquiaga, the latter having paid in cash to the former that amount of money, so that the contracting parties shall be the owners in the aforesaid proportion of one-half of all the properties set forth in the inventory and which has been mentioned in the preceding clause and accepted in conformity.

Name of the Firm.

Third, the firm shall do business under the name of "P. Van Syckel & Company" and the administration and management of the same shall be had indiscriminately by both partners, and in case of absence of Mr. Van Syckel the contracting parties shall appoint a person worthy of confidence to take charge of the property as an employee of the firm.

Term.

Fourth, the term for which the firm is organized shall be two years, which will expire on the 31st day of May, 1902, but they may agree upon the dissolution of the contract before the expiration of that term, either because of convenience to both parties or because of disagreement in the course of the business, or for any other cause. They may also decide to continue the same for two years longer or for such time as they may deem convenient.

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Profits or Losses.

Fifth, the profits or losses which may be made by the firm shall be apportioned by halves to both contracting parties.

Balances.

Sixth, every three months a balance shall be taken and the resulting profit in cash shall be credited in equal parts to each partner, and, if decided upon by both contracting parties, such profit may be invested for the development of the business.

Monthly Inventory.

Seventh, the partner, Mr. Van Syckel, is bound to deliver to Messrs. Sobrinos de Ezquiaga monthly an inventory of all the existing cattle. Messrs. Ezquiaga are at the same time bound to deliver to Mr. Van Syckel a statement of the profits or losses which may result in the business, monthly.

Prohibition.

Eighth, the partners are prohibited from disposing of the stock of cattle and effects belonging to the firm without the previous approval or agreement of both parties.

Neither could the firm dispose of larger sums than the profits in cash, which may be obtained from the dairy business.

Increase of Capital.

Ninth, if hereafter both contracting parties shall decide to enlarge the business, the capital may be increased for the same industry as well as for the purchase of land.

Declaration.

Tenth, as in the capital appearing in the inventory there appears a mortgage credit for which Emilio Montilla y Valdespino is answerable, should this gentleman desire to pay that amount and interest thereon until the date of payment which under this instrument becomes the property of the firm hereby organized, the cancellation thereof be made and, whatever the amount, shall be credited to the capital account of each partner.

Death.

Eleventh, in case of the death of the partner Mr. Van Syckel before the expiration of the term for which the firm is organized, his heirs, by agreement with Messrs. Sobrinos de Ezquiaga, shall decide whether the firm shall be liquidated or continue.

Differences.

Twelfth, any difference arising between the partners shall be submitted to friendly arbiters, elected one by each party, and in case of disagreement, a third shall be elected by lot by the parties, to whose decision they shall submit, binding themselves to stand and abide by the decision that may be rendered as an executory judgment without further claim.

Explanation.

Thirteenth, if later on the debtor of the mortgage hereinabove described in this instrument should desire to obtain an assignment of the same this firm shall be bound to transfer it without any opposition, paying of course the capital and interest up to the date of the

transfer, and the resulting amount shall be credited to the capital account of each partner.

In which terms they organize this partnership, which clauses and conditions they bind themselves to comply with faithfully," etc.

And to said partnership agreement was appended the following:

General Inventory of Stock of the Firm of P. Van Syckel & Company.

Cattle:

131 cows	at 50 pesos each	\$6,550.00
106 young cows & bulls	" 28 " "	2,968.00
11 working oxen	" 50 " "	550.00
9 horses	" 60 " "	540.00
6 mares	" 50 " "	300.00
15 calves	" 10 " "	150.00
3 colts	" 20 " "	60.00
Total		11,118.00

Appurtenances:

1 milk tank, with all its accessories of jars, bottles, baths, etc.	1,052.00
2 carts at 65 pesos each	130.00
3 " " 40 " "	120.00
4 milk carts " 53.75 " "	215.00
22 liquid gallons for cleaning jars at 75.59 gold, current money	125.98
Invoice of wheels, axles, springs, etc.	254.03
Total	1,897.01

Mortgage:

Value of the mortgage on the "Santa Cruz"	11,724.77
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Rural property:

Value of the property, "Sabana Seca," purchased from Geigel	4,148.00
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Recapitulation.

Value of the cattle as per inventory	\$11,118.00
" " appurtenances	1,897.91
" " the mortgage on "Santa Cruz"	11,724.77
" " the property, Sabana Seca	4,148.00
" " working capital	1,111.32
Total	30,000.00

VIII.

On the 27th day of July, 1901, the said Paul Van Syckel and Miguel Luis Arzuaga, the latter acting as the representative of said firm of P. Van Syckel & Company, executed a Notarial instrument between themselves, which was afterwards recorded, by which they affirmed and admitted that the said lease of the 279 acres of "Santa Cruz" from Montilla to Van Syckel should be considered as still alive and subsisting in favor of said Paul Van Syckel alone and as having priority over the mortgage which was then a part of the assets of said firm of P. Van Syckel & Company; and a correct translation of the body of said Notarial agreement is as follows:

"The parties appearing have in my judgment the necessary legal capacity to make an agreement postponing a real right of mortgage to another of lease, and Don Miguel Luis Arzuaga y Garayalde, in the representation which he shows says:

First, that the copartnership P. Van Syckel & Co. is owner of three mortgage credits which amount to 11,000 pesos, Mexican money, owned by Don Emilio Montilla y Valdespino and said credits are:

1. One of 1000 pesos, of principal, and interest at ten per cent per annum, falling due on the 18th day of August, 1895.

2. Another of 3000 pesos principal, and interest at one per cent per month, falling due on the 15th day of March, 1897.

3. And another of 4000 pesos principal, and interest at one per cent per month, falling due also on the 15th day of March, 1897.

These credits are guaranteed by mortgages made by Mr. Emilio Montilla y Valdespino over a farm or sugar estate named "Santa Cruz," which is situated in the ward of Juan Sanchez, municipal district of Bayamon, registry of property of this city: it contains an area of 314 acres of land, equal to 113 hectares, 11 acres and 15 centiarens, and is bounded on the east by the farm "Caridad" which belonged to Don José Escolastico Berrios, being separated therefrom by the Bayamon river, on the north by the farm "Santa Barbara" of Don Miguel Lopez, and on the west by the town and the lands of Juan Basilio Nuñez, and on the south by the Isleta of said Juan Basilio Nuñez.

These credits arise from contracts of loans with voluntary mortgages made between the said Emilio Montilla y Valdespino and José Eleuterio Marxuach y Echevarria by documents of the 19th of August, 1892, before the Notary of this city, Juan Ramon de

77 Torre y Ramos, of the 28th of March and the 9th of August of 1894, before the Notary of this city, José Augustin de la Torre y Framaint, inscribed in the registry of property of this city on the back of folio 116 of Volume 2 of Bayamon at pages 156 and 157 of volume II of the same municipality, property number 79, inscription ninth, tenth and eleventh.

Second, that the credits and real rights of mortgage named, José Eleuterio Marxuach y Echevarria ceded and transferred in favor of Paul Van Syckel, in accordance with a document executed before me on the 16th of March, 1900, inscribed in the registry of property of this city on the back of page 57, volume 19 of Bayamon, property

number 79 triplicate, inscription 15th, and all the rights belongs today to the partnership P. Van Syckel & Company, having been turned over to it by the partner, Mr. Paul Van Syckel, resulting from documents constituting the same executed before me on the first of June, 1900, under number 378.

Third, that the party appearing, Mr. Paul Van Syckel, is lessee of the farm or estate "Santa Cruz" as described, in as far as refers to 279 acres of the same for the rental of 105 pesos, provincial money, payable monthly and with terms and conditions of agreement of lease which he has made with Don Emilio Montilla y Valdespino by document of the 23rd of June, 1897, executed before the Notary of this city, Don Mauricio Guerra Mondragon y Megias and inscribed in the registry of property of the same on the back of page 158, volume 11 of Bayamon, property number 79 duplicate, inscription 14th.

Fourth, and the industrial partnership of P. Van Syckel & Co., represented by its managers Solrinos de Ezquiaga and for and in its name Don Miguel Luis Arsuaga y Garayalde, agrees:

That all and whatever rights of preference the real rights of mortgage of which review has been made, constituted over the estate "Santa Cruz" described, have or may have for all cases, including that of judicial claim, all these they postpone to the real right of lease mentioned in favor of Mr. Paul Van Syckel and his assigns, renouncing the right which they might have to ask for the rescission of said lease.

Mr. Paul Van Syckel on his part says that he accepts this document in all its parts."

IX.

In the month of September, 1901, Montilla not having in the meantime paid either principal or interest on his mortgage, the said firm of P. Van Syckel & Co., which had come to own the same as aforesaid, foreclosed the same under a sundry proceeding obtaining in the local courts and, there being no bidders for the appraised value, had said plantation adjudicated by said court to said firm, but in the decree of said court secured a reservation of said leasehold right on the 279 acres of said plantation to Van Syckel alone, and in an order of the court subsequent to said adjudication the court directed that said Van Syckel be notified thereof but only directed the delivery to the firm of P. Van Syckel & Co. of the 35 acres not covered by the former's lease.

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X.

That by a Notarial instrument executed on the 26th day of May, 1902, the firm of P. Van Syckel & Company was extended for a term of four years from June 1st next thereafter, that is, until the 1st day of June, 1906, a correct translation of the body of said renewal instrument being as follows:

"The parties state:

First, that on June 1st, 1900, and by instrument executed before the Notary of this city, Don Santiago R. Palmer, Messrs. Paul Van

Syckel, for himself, and Mr. Miguel Luis Arzuaga y Garayalde, as managing partner of the firm of Sobrinos de Ezquiaga, organized under the name of P. Van Syckel & Company a civil universal partnership with residence in this city, for the purpose of engaging in the dairy business and purchase of cattle.

Second, the said firm was organized with a capital of thirty thousand pesos, brought into it by both partners in the proportion of 15,000 pesos, by Mr. Paul Van Syckel and 15,000 pesos by Messrs. Sobrinos de Ezquiaga, who delivered said amount of money in cash to the former, so that the property set out in the inventory, belonging to Mr. Van Syckel, should become the property of both partners and in the aforesaid proportion of one-half to each of them.

Third, that by clause fourth of the instrument hereinabove referred to, which I have before me in this act and return to the interested parties, with entry thereon to that effect, the term of two years was fixed as the period of time for the duration of the said term, making it discretionary with the parties to either extend or dissolve the firm at the expiration thereof, for two years more, or for such time — they may deem convenient.

Fourth, that the aforesaid period of time being about to expire on the 31st day of the current month for the aforesaid firm, the parties, in view of the good result of the business, have agreed mutually to extend the same for the terms and in the manner herein-after stated.

Fifth, that although in the instrument of organization of P. Van Syckel & Company it is set forth therein, as capital of the said firm, a mortgage credit on the *palutation* "Santa Cruz" for which Emilio Montilla y Valdespino was responsible and which was acquired by Mr. Paul Van Syckel by transfer made to him by José Eleuterio Marzuach y Echevarria, under an instrument dated the 16th day of March, 1900, executed before the aforesaid Notary Palmer, it is the fact, and it is so set forth by the parties, that the said credit has been duly cancelled, as said property "Santa Cruz" hereinafter described was adjudicated in payment thereof by order of the District Court of this city dated November 27, 1901, and issued in the executory action prosecuted by the firm of P. Van Syckel & Company against Emilio Montilla for the collection of the aforesaid mortgage credit in the amount of 11,724.77 pesos, said property becoming therefore part of the capital of the firm, and which said property under a survey made by the surveyor, A. Camilo Gonzalez, is described in the manner following: (here follows description).

79 Sixth, that the title of adjudication of the plantation "Santa Cruz" referred to in the preceding paragraph hereof, was taken to the Registry of Property for the district, and it was the object of *of* registration 20th of property 79, quadruplicate, at folio 239, Vol. 20 of Bayamon.

Seventh, that notwithstanding the fact that it was stated in the aforesaid order of court of November 27, 1901, that the adjudication of said property was made for the amount of \$8,700 which was two-thirds of the appraised value thereof in *in* a contract of mortgage loan entered into by and between Messrs. Montilla

and Marxuach, the contracting parties assigned to the property for the time being, as the value thereof for the purpose of this contract, the same value as was represented by the mortgage credits brought into the firm by the partner P. Van Syckel, 11,697.75 pesos, provincial money, for the reason that as the total value of the preferred liens on said property, for which the adjudicatees are answerable, and the costs of the action have not been liquidated, no value can be given thereto in connection with the cost of acquisition thereof so as to determine whether or not there was any profit or loss to the firm, which operation they postponed until the moment shall have arrived for the final liquidation of the firm or before that time, should it be convenient to them.

Eighth, therefore, the contracting parties, carrying the agreement into effect on the basis hereinbefore stated, covenant that the firm P. Van Syckel & Company is hereby extended for four years more from and after the first day of the month of June of the current year, continuing its business and operations under the same clauses and conditions as are stipulated in the instrument of organization thereof, referred to in paragraph first of the Facts herein, without making in any one of them any alteration that may modify the context thereof and without any other explanation than that stated in paragraphs fifth, sixth and seventh of this instrument.

To a compliance herewith they bind themselves in accordance with law.

XI.

In the month of November, 1902, the plantation "Santa Cruz" was taken in rental by one Ygnacio Rosales, two Notarial instruments being executed for that purpose: one of them was for the 279 acres and was executed by Paul Van Syckel as lessor, the other was for the remaining 35 acres and was executed by the firm of P. Van Syckel & Company. The term of these leases was for four years and they were executed in accordance with the understanding hereinafter set forth. Pending their expiration, the firm of P. Van Syckel & Company as a firm and one Paul A. English individually entered into a partnership agreement under the name of "Santa Cruz Sugar Company" for the purpose of renting said plantation "Santa Cruz" and growing sugar cane thereon. A correct translation of the body of said partnership agreement is as follows:

"By the present document, which I acknowledge to have the same force and effect as if it were a public instrument, we make the
80 contract of organization of a private partnership for profit into which we enter under the agreements and stipulations contained in the following clauses:

First, the object of the firm is to be the planting, cultivation and disposal of sugar cane on the property "Santa Cruz," situated in the barrio of Juan Sanchez, municipal district of Bayamon, and composed of 314 acres of land, more or less, now belonging to P. Van Syckel & Company, as well as on any other property or properties as may hereafter be leased by the firm if convenient to it.

Second, the firm is organized under the name of the Santa

Cruz Sugar Company, the only members thereof being as stated at the beginning hereof, the undersigned Paul English and the industrial firm of P. Van Syckel & Company, which was organized under an instrument dated June 1st, 1900, executed before the Notary of this city, Santiago R. Palmer, and extended under another instrument dated May 26th, 1902, executed before the Notary of this city, Eduardo Acuña Aybar, the date for the expiration thereof being fixed for the first day of June, 1906.

Third, the city of San Juan is fixed as the residence of the firm for all legal purposes.

Fourth, the capital of the firm consists of the amount of Ten Thousand Dollars brought in by both partners in the following proportions: P. Van Syckel & Company \$8,500, representing therefore 85% of the capital of the firm; and Paul English \$1,500 which consequently represents the remaining 15% of the said capital of the firm.

Fifth, the term of the duration of this firm, as subordinated to that of the firm of P. Van Syckel & Company, shall extend to the aforesaid first day of June, 1906. If on that date the said firm shall be extended, this firm may also be extended, if convenient, and for the same or less time as the former, as may be agreed to by the partners; and to make it more clear it is understood that the continuation of the firm after the first day of June, 1906, is purely discretionary with the partners.

Sixth, the management and administration of the Santa Cruz Sugar Company shall be in charge of the managers of P. Van Syckel & Company indiscriminately (namely, Sobrinos de Ezquiaga and Paul Van Syckel or of the person designated by either of them by mutual agreement) as such managers by power of attorney granted and conferred under public instrument. Wherefore the partners of P. Van Syckel & Company, as such managers and administrators of the Santa Cruz Sugar Company or the attorney in fact, as the case may be, shall have full and complete power to transact all the business of the firm and any of the said partners or the attorney in fact appointed by them may execute all such public and private documents as may be necessary without any limitation except that they shall not have power to sell the present and future property of the firm, or the products thereof, nor encumber them in any way, without the previous agreement of both partners of P. Van Syckel & Company, or of whomsoever shall lawfully represent them.

Seventh, for the enjoyment and exploitation of the property
81 "Santa Cruz" and the buildings thereof, which, as hereinbefore stated, is the main object of the firm, these latter shall pay \$175 monthly as rent to the person or corporation which at any time shall appear to be the owner or lessee thereof.

Eighth, taxes of all kinds that may be levied on the property, whether on its intrinsic value or that of the crops which may be planted thereon, shall be for the exclusive account of the firm hereby organized.

Ninth, Messrs. P. Van Syckel & Company state that they have a contract with Manuel Sosa y Oliver for the administration of the

property "Santa Cruz" under the clauses and stipulations set forth in a document dated October 6, 1904, and in an additional document dated January 5, 1905, and that such profits or losses as may result from this contract shall be respected in all parts thereof by the Santa Cruz Sugar Company.

Tenth, the accounts of the firm and everything in reference thereto shall be in charge of the managers of P. Van Syckel & Company, who shall have the obligation of producing monthly a comprehensive statement of all expenses that may originate in the property based on the account of the administrator or manager, as well as from the crops planted thereon and the proceeds of the products sold, all of which shall be done in such a manner as may permit an exact understanding of the progress of the firm.

Eleventh, in case of the death of the partner, Mr. English, during the term of this contract, his heirs jointly with P. Van Syckel & Company shall decide as to whether or not the firm shall be liquidated or continued.

Twelfth, any difference arising between the partners shall be submitted to friendly arbiters to be elected, one by each party, and in case of disagreement a third arbiter shall be elected by lot, the contracting parties binding themselves to stand and abide by the decision that they may render, without any right to make any further claim.

Thirteenth, a balance and inventory of the firm shall be taken at the end of each crop, and the partners shall agree mutually upon the amount that they may consider it convenient to distribute, leaving a sufficient balance on hand to attend to the needs of the firm until the beginning of the following crop; the profits or losses to be apportioned in proportion to the capital brought.

Fourteenth, the Santa Cruz Sugar Company binds itself on its part to maintain the property in good condition cultivating the same as may be to its advantage, and taking care of same at all times as if it were its own."

XII.

Paul Van Syckel and his family removed their residence from Porto Rico about the end of the month of January, 1901, leaving defendants Sobrinos de Ezquiaga as his attorneys in fact to manage his interests in Porto Rico, and thereafter resided in the city of Havana, Island of Cuba, until the death of said Paul Van Syckel which occurred in said Havana on the 27th day of

December, 1905. From the time of the above removal of his residence said Van Syckel visited Porto Rico on short business trips on an average of about once each year. The firm of Sobrinos de Ezquiaga remained in active management of the business of both P. Van Syckel & Company and Santa Cruz Sugar Company, both of which proved quite profitable, and rendered to Paul Van Syckel in Cuba periodical statements of account of the two partnerships, from which it appears that the above rental of \$175 per month was charged against said Santa Cruz Sugar Company, but it does not satisfactorily — to whom the same was paid.

XIII.

From the year 1901 to the year 1905 litigation continued in various courts between Montilla on the one side and Van Syckel individually and the firm of P. Van Syckel & Company on the other. They instituted various proceedings against each other in the secular courts and harassed each other in many ways. Among these suits was one begun in December, 1902, by Montilla against both Van Syckel individually and P. Van Syckel & Company, and against the original mortgagee Marxuach as well, for the purpose of having reviewed and set aside practically everything which had taken place as to said property since the forced transfer of the mortgage lien on "Santa Cruz" from Marxuach to Van Syckel, and particularly to have declared void the lease from Montilla to Van Syckel of June 23, 1897, and the foreclosure of the mortgage, asking the right to redeem; that the said Van Syckel and P. Van Syckel & Company as parties to that suit defended the existence and validity of that lease in accordance with the agreement between them as hereinafter set forth, both being represented by the same counsel, and obtained from the trial court a judgment sustaining their contentions in all respects; that on September 24, 1903, Montilla took his appeal from that judgment to the Supreme Court of Porto Rico, where the same contentions were again made by counsel for the respective parties; and that on March 11, 1905, said Supreme Court rendered its decision affirming the judgment of the lower court in all respects and expressly holding after full discussion that said lease was a valid, recordable and subsisting contract. This judgment was appealed from to the Supreme Court of the United States but several months thereafter on December 30th, 1905, while that appeal was still pending the parties Paul Van Syckel and P. Van Syckel & Company on the one side and Mr. Montilla on the other through the said attorney Eduardo Acuña, compromised and settled all the litigation of every kind and character between the parties by the payment to Montilla of \$2500, in cash by P. Van Syckel & Company.

The court finds that through all the litigation with Montilla, Eduardo Acuña acted as attorney jointly and indiscriminately for Sobrinos de Ezquiaga, Paul Van Syckel and P. Van Syckel & Company up to and including the time of the final settlement last above mentioned.

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XIV.

The said Paul Van Syckel during his lifetime agreed with Sobrinos de Ezquiaga by the terms of his partnership in the firm of P. Van Syckel & Company and otherwise that said firm of P. Van Syckel & Company should be the sole and exclusive owners of the said farm "Santa Cruz," free and clear of any claims upon the part of said Paul Van Syckel by reason of said lease of June 23, 1897; and that said deed of postponement should be kept alive and represented as binding between the parties for a common purpose as between said Paul Van Syckel and said Sobrinos de Ezquiaga, to wit, for the protection of the title of said P. Van Syckel & Company to said farm "Santa Cruz"; but it was at the same time understood

and agreed between the said parties that it was not to be given force or effect as between them nor as against the absolute title of said P. Van Syckel & Company to said farm, independent and free from the lease aforesaid, should the Montilla mortgage be thereafter foreclosed and said P. Van Syckel & Company become purchasers of the property.

XV.

The Court finds that the deed or document of July 27, 1901, executed between Paul Van Syckel and the defendants P. Van Syckel & Company was executed between the parties in accordance with the understanding and common purpose above set forth, in order that P. Van Syckel & Company might protect itself against the claims of Montilla in the event that he should be permitted by the courts to set aside the mortgage foreclosure executed by him to Marxuach and subsequently transferred by the latter to P. Van Syckel & Company; that it was the purpose of Paul Van Syckel and the defendants Sobrinos de Ezquiaga to assert the lease previously executed by Montilla to Paul Van Syckel only in the event that Montilla should be entitled to redeem the property.

The Court further finds that the said document of July 27, 1901, was made by the said Paul Van Syckel and P. Van Syckel & Company upon the advice of their joint counsel, Eduardo Acuña, for the purposes above set forth.

The Court further finds that considerable feeling existed upon the part of Paul Van Syckel against the said Montilla, and that the former instructed the said attorney Acuña to do all in his power to oppose the claims of the latter.

XVI.

We are unable to find from the evidence that any direct intentional deceit was actually practiced upon the courts, or, in the last analysis, that any fraud was thereby practiced upon said Montilla if the lease was assignable under the statute while Van Syckel lived. There was no secret about the partnership of P. Van Syckel & Company; it was constituted by a public instrument and Montilla had notice of it as well as of the postponing instrument; and the courts had the same.

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XVII.

The evidence in this case is clear, unequivocal and convincing that this lease of June 23, 1897, was to have no life or effect as between the parties in their accounting during or after the date of the partnership, but that the same was merged in the fee at the time of the adjudication thereof to said partnership of P. Van Syckel & Company, if not before.

XVIII.

The said partnership of P. Van Syckel & Company, as well as the subordinate partnership of Santa Cruz Sugar Company, expired by limitation of time fixed in their own articles of association on the first day of June, A. D. 1906.

XIX.

The value of the leasehold right claimed by complainants by virtue of said lease of June 23, 1897, is more than the sum of Five Thousand Dollars.

And upon the foregoing findings of fact the court bases the following conclusions of law:

1. That the contract of lease executed on the 23rd day of June, 1897, between Emilio Montilla and Paul Van Syckel is without legal force or effect and has ceased to exist.

2. That the leasehold rights previously existing in said Paul Van Syckel were merged in the fee title to said farm "Santa Cruz," acquired by the firm of P. Van Syckel & Company by virtue of the adjudication to it in the foreclosure suit against Montilla, and as a result of their agreement, set forth in the Findings of Fact, executed between Paul Van Syckel and P. Van Syckel & Company.

3. That the deed of postponement executed on the 27th day of July, 1901, by Paul Van Syckel and P. Van Syckel & Company is without legal force or effect as between the parties to this suit.

4. That defendants Sobrinos de Ezquiaga are entitled to the relief prayed for in their Cross Bill against said lease and deed of postponement.

5. That the expired firm of P. Van Syckel & Company is the owner of the farm "Santa Cruz" as a part of its assets, free from any claim of complainants by virtue of the contract or instruments aforesaid.

6. That complainants, claiming under Paul Van Syckel, are estopped from the assertion of said lease by reason of the facts found in the foregoing findings.

And the court further, upon request of the complainants, hereby certifies the following proceedings in the hearing of the evidence in said cause, containing rulings of the court upon the admission or rejection of evidence offered therein, in accordance with the provisions of the statute in such case made and provided:

I.

During the presentation of evidence on behalf of defendants Sobrinos de Ezquiaga said defendants produced as a witness in their behalf one Eduardo Acuña Aybar and, after stating that he was 48 years old, a lawyer by profession practicing in San Juan both before and since the American occupation, and that he had held judicial and other official positions, his direct examination proceeded as follows:

Q. Did you know Paul Van Syckel during his lifetime?

A. For a long time; since 1891.

Q. Have you ever acted as his attorney or lawyer?

A. I acted as his attorney since the time I knew him, that is to say, since 1901.

Q. Are you counsel or attorney for the defendants, Sobrinos de Ezquiaga?

A. In this case?

Q. In any case.

A. Yes, sir; I am the attorney for Sobrinos de Ezquiaga.

Q. How long have you been acting for them as their attorney?

A. Since the time I have renewed my practice of law, that is, since 1901.

Q. When Mr. Van Syckel left here for Cuba, did you and he exchange letters, correspondence, with each other?

A. Yes, sir; during all the time that he remained in Cuba we exchanged letters as to all his business in this Island.

Q. Until what time did you consider yourself as acting as attorney and counsel for Mr. Van Syckel?

A. Up to the time of his death that occurred in 1905.

The COURT: Is this testimony to be in his interest, in Mr. Van Syckel's interest?

MR. DEXTER: Against his interest.

The COURT: An attorney, without his client's consent?

MR. DEXTER: I have prepared for that.

The COURT: When you ask the question we will hear from you further. I know there is a well known line drawn where it is not only proper for an attorney to testify but he can be required to testify where it is of a certain character, but I didn't understand there could be any question of that kind here, because it is against his interest.

MR. DEXTER: But at that time it was for his interest.

MR. PERTINGALL: The question of interest, if your Honor please, is a matter to be determined when the disclosure comes up.

Whereupon an argument ensued upon the question and the court adjourned in order to have opportunity further to consider it. Upon resuming the hearing:

The COURT: At the last hearing of this legal question now before this court, counsel for the complainants objected to Mr. Acuña being permitted to testify, on the ground that the testimony he was about to give was privileged between attorney and client, as he, attorney Acuña, was the attorney for both the predecessor in the interest of complainants and of these respondents at the time of the transactions he is about to testify to.

MR. PERTINGALL: And further objects on the ground that the making of the Notarial instrument of July 27, 1901, postponing the mortgage rights of Sobrinos de Ezquiaga to the leasehold rights of Paul Van Syckel is alleged by said Sobrinos de Ezquiaga to have been a simulated transaction which, if true, was confessedly to deceive the courts of justice and to claim rights as against their opponent Montilla under that instrument as an existing contract which they are now asking this court to find did not then exist but had been merged in the title of P. Van Syckel & Company.

The COURT: And now at two P. M. on Saturday, the 18th day of April, 1908, the court having had said objections under advisement since the last adjournment, announces that the objection to

the testimony of Mr. Acuña is overruled, but reserves the right during the admission of such testimony to scrutinize its nature and to modify this ruling if necessary; and as to the second objection, which virtually means that respondents in their cross-bill are not coming into court with clean hands, the court holds its ruling hereon in abeyance, as it cannot decide it at this time under the facts in connection therewith. It is well settled that when an attorney is employed by two persons to perform professional services jointly for them and the clients afterwards get into a dispute about it between themselves, communications made to the attorney at the time of the employment by either of them in the presence of the other are not privileged and either of the parties in the subsequent litigation between themselves can even compel the attorney to testify without the consent of the other joint employer.

Mr. PERTINGILL: To which ruling, complainants by their counsel except.

The court subsequently in its opinion overruled the second objection above made by complainants. Mr. Acuña was thereupon recalled to the witness stand and further testified as follows, it being understood by counsel and the court that counsel for complainants be considered as objecting to, and excepting to the ruling of the court adversely to him upon, each of the questions to which the objections last above stated and ruled upon generally were applicable:

Q. As you have stated heretofore, Mr. Acuña, as attorney for both Mr. Van Syckel and the house of Sobrinos de Ezquiaga, you had absolute charge of the litigation and of the interests of these parties as against Montilla, did you not?

A. I was in charge of the suits carried on by the partnership of P. Van Syckel & Company against Montilla. The members of the firm of P. Van Syckel & Company were the house of Sobrinos de Ezquiaga and Paul Van Syckel.

Q. At that time what was the object of your employment both by Paul Van Syckel and the house of Ezquiaga as against Montilla?

87 A. That Montilla was the debtor of a mortgage credit against the estate "Santa Cruz," which mortgage credit became the property of P. Van Syckel & Company. For the execution of this mortgage I was appointed by P. Van Syckel & Company and in connection with said foreclosure a series of law suits ensued against P. Van Syckel & Company and against Paul Van Syckel, said suits all brought by Montilla.

Q. In these law suits and controversies, did you represent Paul Van Syckel personally as well as P. Van Syckel & Company?

A. Yes, sir; in both entities.

Q. Well, continue, please.

A. I think your question has all been answered.

Q. What suits were pending? Just explain briefly without going into detail, what suits were pending involving the farm "Santa Cruz" and approximately the dates when they were brought.

A. About the year 1901 the foreclosure of mortgage against Montilla was begun or proceeded with. It was ended in the month of

November by a sale. Against said sale proceedings by Mr. Montilla began a suit *a suit* for nullity.

Q. About when was that suit instituted, Don Eduardo?

A. Within the early months of the following year, 1902.

Q. Now I offer to you, Señor Acuña, the exhibit which has already been offered in evidence by the complainants, Exhibit D, being the postponement of the mortgage from Montilla to Marxuach to the lease executed by Montilla to Van Syckel. Were you the attorney for Mr. Van Syckel and Sobrinos de Ezquiaga and P. Van Syckel & Company at that time and in connection with this document?

A. Yes, sir; I was attorney and I was the one who advised the making of that document before beginning the foreclosure of the mortgage.

Q. Now, why was that, Señor Acuña?

A. He made a deed of postponement in accordance with my advice.

Q. Did you discuss with him the matter of postponing the mortgage to the lease?

A. Yes, sir; that was the purport or subject of my advice and of the deed.

Q. What did he say and do in respect thereto?

A. In accordance with the advice given by me, and in combination with Messrs. Ezquiaga he carried out the lease and postponed the mortgage, that is, altering the relative situation of the two liens.

After testifying upon other points, the examination proceeded.

Q. Is there anything else that you think of that is material or that might be of benefit for the court to know: any other fact that you know about to show the understanding and agreement of Mr. Van Syckel in this arrangement?

The COURT: But it must be his act or what he said, if anything. If you don't think of anything, say so.

88 A. I remember what brought about or what caused the postponement of the mortgage credit.

Q. Please state that—what circumstances?

The COURT: You have stated that you advised it. Of course we know that you had an object in that, but any action that Paul Van Syckel took is what we want.

A. The only thing done by him was to carry out the deed of postponement for the parties.

Q. Now, Mr. Acuña, after you had given certain advice about the method of defending by both Paul Van Syckel personally and Van Syckel & Company, against Montilla, what did Mr. Van Syckel do or say with respect thereto?

A. He followed absolutely my advice and the lease of the Santa Cruz estate remained standing purely as a means of defence against the suits of Montilla.

Mr. PETTINGILL: I move to strike that answer out as giving simply the opinion of the witness.

The COURT: No, I will overrule that.

Mr. PETTINGILL: Note an exception.

Q. Did Mr. Van Syckel say anything to you with respect to the cancellation of the lease?

A. Yes, sir; on several occasions he spoke to me about the subject of cancelling the lease and I advised on the contrary, because that lease was the means of defence against any suits that Montilla might bring during his lifetime, that that lease was entirely fictitious.

Mr. PETTINGILL: Now, I move to strike all that out as the opinion of the witness.

The COURT: It won't be all stricken out.

Mr. PETTINGILL: I mean from the time he begins to say that this was a good defence and was all fictitious.

The COURT: I am going to leave that there as far as it goes, but I won't let it go any further.

Mr. PETTINGILL: I ask an exception.

II.

PEDRO ARSUAGA, a member of the defendant firm of Sobrinos de Ezquiaga, was also introduced as a witness in their behalf and, in the course of his examination, was handed certain letters purporting to have been received by his firm from Paul Van Syckel in his lifetime, also the letter press copies of certain letters purporting to have been written by said firm to Paul Van Syckel in his lifetime, and was asked to identify them, to which his reply was:

A. Yes, sir; these letters are authentic. They are signed by his own signature, and I know it; I am acquainted with it. And these others, the copies, are exact copies of our letters, Sobrinos de Ezquiaga's letters to him, to Mr. Van Syckel.

Mr. PETTINGILL: I have no objection to any letters having 89 Mr. Van Syckel's signature, nor to any of the copies the receipt of which is acknowledged in reply, but I object to the copies of any letters of which there is nothing to show that they were received by him.

Mr. DIXTER: We are entitled to the benefit of the assumption that in the ordinary course of affairs he would have received them.

The COURT: You may ask this witness if he knows of his own knowledge that his house sent the letters of which these are copies to Mr. Van Syckel.

Q. Do you know that the letters addressed to Mr. Van Syckel, of which these are copies, were in fact sent by your house to Mr. Van Syckel in the ordinary course of mail?

A. Yes, sir.

Q. And have you here in your possession the letter press copies of the same?

A. Yes, sir; with letter-press copy books.

Q. Are the original copies there?

A. Yes, sir.

(The letters and copies were offered.)

Mr. PETTINGILL: There is another formality that makes the copies inadmissible on another ground, that is that we have never been called upon to produce the originals. I want to ask the witness a question. I don't believe he knows that these letters were mailed.

Mr. DEXTER: They have got a letter press copy book, stamped by the Municipal Court, every page, to give them authenticity. The Commercial Code provides that the Municipal Judge shall stamp and seal every page, and it is made a criminal offence to even tear out a page, and that is why we submit that the presumption must attach that they are correct.

Mr. PETTINGILL: I want your Honor to remember that anything that is acknowledged as received in the letters from Van Syckel, I have no objection to.

Mr. DEXTER: All I ask is that the ordinary presumption be taken that they were sent.

The COURT: Mr. Dexter, you may call upon Mr. Pettingill now to produce the originals of those letters.

Mr. DEXTER: I do call upon him now.

Mr. PETTINGILL: I don't know where they are now.

The COURT: It is like the argument of the man that didn't see the bullet leave the gun.

Mr. PETTINGILL: Save an exception.

And thereafter under the said ruling letters from Sobrinos de Ezquiaga to Paul Van Syckel, which were not acknowledged to have been received by any letters of Van Syckel, produced, were admitted in evidence as material to the issues and considered by the court in making its Findings.

The foregoing statement of facts in the nature of a special verdict, together with extracts from the proceedings showing certain rulings of the court upon the admission and exclusion of evidence having been submitted by counsel and, after amendment, approved by the court, the same is hereby signed and certified as provided by law at San Juan, this 25th day of August, A. D. 1908, nine months and 8th day of August, 1908.

(Signed)

B. S. RODÉY,

Judge District Court of the U. S. for Porto Rico.

Petition of Appeal.

(Filed August 8, 1908.)

No. 453,

ADA E. H. VAN SYCKEL et al.

vs.

SOBRINOS DE EZQUIAGA et al.

Ada Elvira Hirst Van Syckel, in her own right, and Margaret Ethel, Barbara Paul, William Henry, John Archibald, and Alina

Louise Van Syckel, by the said Ada Elmira Van Syckel, as their next friend, complainants in the above entitled cause, conceiving themselves aggrieved by the order and decree made and entered in said cause on the 7th day of August, A. D. 1908, wherein and whereby it was ordered, adjudged and decreed that a lease executed on the 23rd day of June, 1897, by Emilio Montilla y Valdespino in favor of Paul Van Syckel upon 279 acres of a farm called "Santa Cruz," the same being recorded in the registry of Property of San Juan, Porto Rico, is without legal force or effect and has ceased to exist and should be cancelled in said Registry; that a so-called Decree of Postponement, executed between said Paul Van Syckel and the defendant, Sobrinos de Ezquiaga, on the 27th day of July, A. D. 1901, is without legal force or effect and the same be cancelled and for naught held; and that the firm of P. Van Syckel & Company is the owner of the whole of said farm "Santa Cruz" free from any and all right in complainants under the lease aforesaid, do hereby appeal from said order and decree to the Supreme Court of the United States for reason to be specified in an assignment of errors hereafter to be filed herein, and they pray that this their appeal may be allowed and that a transcript of the record, papers and proceedings upon which said order and decree was made together with findings of fact as provided by law, duly authenticated, may be sent to the said Supreme Court of the United States at Washington.

N. B. K. PETTINGILL,

Counsel for Complainants.

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Order Allowing Appeal.

(Filed August 8, 1908.)

Journal Entry, Aug. 8, 1908.

No. 453.

ADA E. H. VAN SYCKEL et al.

VS.

SOBRINOS DE EZQUIAGA et al.

The petition of complainants herein, by their solicitor N. B. K. Pettingill, praying for an appeal from the final decree in this cause, this day filed, being now heard, it is ordered that an appeal to the Supreme Court of the United States from said final order and decree be, and the same hereby is, allowed as prayed for; and that a certified transcript of the record, stipulations, findings, opinion and all proceedings herein be forthwith transmitted to said Supreme Court of the United States at Washington.

It is further hereby ordered that the bond which said complainants shall give on said appeal shall be in the penal sum of Three Hundred Dollars (\$300) conditioned for the payment of costs as provided by law; and a bond in the above amount having been

duly executed in this cause and, being now presented, is duly examined and approved.

Done and ordered in open court at San Juan this 8th day of August, A. D. 1908.

B. S. RODEY, *Judge*.

Appeal Bond.

No. 453.

ADA E. H. VAN SYCKEL et al.

vs.

SOBRINOS DE EZQUIAGA et al.

Know all men by these presents, that we, Ada E. H. Van Syckel on behalf of the complainants, as principal, and Aden A. English and R. L. Holmes, as sureties, are held and firmly bound unto Juan José Arsuaga, José Pío Arsuaga, Pedro Arsuaga, and Nicasio Arsuaga, as partners under the firm name of Sobrinos de Ezquiaga and Paul A. English in the full and just sum of Three Hundred Dollars to be paid to the said respondents, their executors, administrators or assigns, for the payment whereof well and truly to be made we do bind ourselves our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 8th day of August, A. D. 1908.

92 Whereas, lately at a session of the District Court of the

United States for Porto Rico, in a suit pending in said court between Ada Elvira Hirst Van Syckel in her own right and Margaret Ethel, Barbara Paul, William Henry, John Archbold, and Alma Louise Van Syckel, by said Ada E. H. Van Syckel, as their next friend, complainants, and Juan José Arsuaga, José Pío Arsuaga, Pedro Arsuaga and Nicasio Arsuaga, as partners under the firm name of Sobrinos de Ezquiaga, and Paul A. English, defendants, a decree was rendered against the said complainants, and they having obtained from said court an order allowing an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to said above named defendants is about to be issued upon said appeal in accordance with law.

Now the condition of the above obligation is such that if the said complainants and appellants above named shall prosecute their said appeal to effect and shall answer all costs that may be awarded against them, if they fail to make their plea good, then the above obligation is to be void, else to remain in full force and virtue.

ADA H. VAN SYCKEL. [SEAL.]
R. L. HOLMES. [SEAL.]
ADEN A. ENGLISH. [SEAL.]

UNITED STATES OF AMERICA,

District of Porto Rico:

Aden A. English, being duly sworn, says that he is one of the sureties who has signed the foregoing bond, and that he is worth in visible property within this District subject to execution more than the said sum of Three Hundred Dollars.

ADEN A. ENGLISH.

Sworn and subscribed to before me this 8th day of August, 1908.

JOHN L. GAY,

*Clerk Dist. Court U. S. for P. R.*By A. M. BACON, *Deputy*.

UNITED STATES OF AMERICA,

District of Porto Rico:

R. L. Holmes, being duly sworn, says that he is one of the sureties who has signed the foregoing bond, and that he is worth in visible property within this district subject to execution more than the said sum of Three Hundred Dollars.

R. L. HOLMES.

Sworn to and subscribed before me this 8th day of August, 1908.

JOHN L. GAY,

*Clerk Dist. Court of U. S. for P. R.*By A. M. BACON, *Deputy*.

Sufficiency of sureties on the foregoing bond approved this 8th day of August, A. D. 1908.

B. S. RODEY, *Judge*.*Præcipe for Transcript of Record.*

(Filed August 20, 1908.)

No. 453.

ADA E. H. VAN SYCKEL et al.

VS.

SOBRINOS DE EZQUIAGA et al.

The Clerk of the court aforesaid, in the preparation of the Transcript of Record upon the appeal of the complainants in the above cause to the Supreme Court of the United States, will please include therein the following pleadings and proceedings and no others, to-wit:

1. The original bill of complaint, filed March 8, 1907, with its Exhibits A, B, C, D, E, and F.
2. The amendment to complainants' bill filed May 29, 1907.

3. The Answer and Cross-Bill filed by defendants Sobrinos de Ezquinga June 14, 1907, with its Exhibits 1, 2 and 3.

4. The demurrer of complainants to the Cross-Bill of said defendants, filed June 15, 1907.

5. Opinion of the Court overruling said demurrer, filed June 29, 1907.

6. Complainants' answer to said Cross-Bill filed October 7, 1907.

7. Recital of filing of respective replications on October 14 and November 10, 1907.

8. Opinion of the Court on the merits of said cause as submitted for final hearing, filed July 31, 1908.

9. Final Decree entered August 7, 1908.

10. Findings of Fact, Conclusions of Law, and Certificate of rulings upon evidence, filed as of August 8, 1908.

11. Petition of Appeal, Order allowing appeal, and Appeal Bond, filed August 8, 1908.

12. Minute entry of August 8, 1908, showing allowance of appeal is a copy of the Order allowing appeal.

13. Citation with acceptance of service thereon.

N. B. K. PETTINGILL,

Counsel for Complainants and Appellants.

In the District Court of the United States for Porto Rico,

No. 453. Equity.

ADA ELMIRA HIRST VAN SYCKEL et al.,

vs.

SOBRINOS DE EZQUINGA et al.

I, John L. Gay, Clerk of the District Court of the United States for Porto Rico, do hereby certify the foregoing one hundred and twenty-one typewritten pages, numbered 1 to 121, inclusive, to be a full, true and correct copy of the record and proceedings of the above and therein entitled cause requested in the precept of complainants, copy of which is included in this transcript, as the same remain of record and on file in the Office of the Clerk of said Court.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the District Court of the United States for Porto Rico, at San Juan, P. R., this 30th day of September, A. D. 1908.

[Seal United States District Court for the District of Porto Rico.]

JOHN L. GAY,

Clerk of the District Court of the United States for Porto Rico,

By A. M. BACON,

Deputy Clerk.

UNITED STATES OF AMERICA, ss:

The President of the United States to Juan José Arsuaga, José Pío Arsuaga, Pedro Arsuaga and Nicasio Arsuaga, as partners under the firm name of Sobrinos de Ezquiaga, and Francis H. Dexter, their counsel of record; and to Paul A. English, Greeting:

You, and each of you, are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within sixty days from the date of this writ, pursuant to an appeal duly allowed and entered in the Clerk's Office of the District Court of the United States for Porto Rico, in a suit wherein Ada Elmira Hirst Van Syckel in her own right and Margaret Ethel Van Syckel, Barbara Paul Van Syckel, William Henry Van Syckel, John Archbold Van Syckel and Alma Louise Van Syckel, by said Ada Elmira Hirst Van Syckel as their next friend, are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said complainants and appellants, as in the said order allowing an appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Bernard S. Rodey, Judge of the District Court of the United States for Porto Rico, and the seal of said court, this 8th day of August, A. D. 1908.

[Seal United States District Court for the District of Porto Rico.]

B. S. RODEY, *Judge*.

Attest:

JOHN L. GAY, *Clerk*.

Service of the above citation and receipt of a copy thereof admitted this 8th day of August, 1908.

PAUL A. ENGLISH

In Propria Persona

FRANCIS H. DEXTER,

Solicitor and Counsel for

Sobrinos de Ezquiaga, Appellees.

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Order Appointing J. L. Haas Commissioner.

Filed August 8, 1908.

In the United States District Court for Porto Rico.

No. 453. In Chancery.

ADA E. H. VAN SYCKEL et al.

vs.

SOBRINOS DE EZQUIAGA et al.

It having been provided in the final decree in this cause that a division of the real estate belonging to the firm of P. Van Syckel &

Company should be made if the same is practicable and can be accomplished without impairing the value of said properties or depreciating them or the segregated portions thereof, considering the uses to which the same as they now stand can best be applied, and that, if the parties could not agree upon a division or as to whether or not a division in kind is practicable, a Commissioner should be appointed by the Court for that purpose; and the said parties, by their respective solicitors, having this day appeared in court and announced that they are unable to agree upon an amicable division or even as to whether or not a division in kind is practicable, it is therefore hereby ordered,

That John Hass, Esq., be, and he is hereby, named and appointed as the Commissioner of this court to examine the said tracts of real estate in said final decree described as the property of said firm of P. Van Syckel & Company, to have the same surveyed if necessary, and thereafter at as early a day as may be practicable to make an impartial report to this court as to whether a division of said properties can be equitably made into two parts practically equal in value without impairing the value of said properties or depreciating them or the segregated portions thereof, considering the uses to which the said properties as they now stand can be best applied; and, in case such a division can be made, to report one or more plans for such division which may recommend themselves to him as practicable and equitable.

It is further ordered that said Commissioner shall before entering upon the performance of said duties take and subscribe an oath for the faithful and impartial performance thereof.

(Signed)

B. S. RODEY, *Judge*.

Commissioner's Report.

Filed August 21, 1908.

453, In Chancery.

ADA E. H. VAN SYCKEL et al.

vs.

SOBRINOS DE EZQUIAGA et al.

In accordance with an order issued out of this Court, appointing me a commissioner to make a personal inspection of the plantations known as "Santa Cruz" and "Plantaje" property of the firm of P. Van Syckel & Co., and the Santa Cruz Sugar Co. in Liquidation, in order to ascertain whether or not an equitable division could be made of said properties without impairing the value of same; and in accordance with the further written instructions of this Court; I did on the 17th day of August, 1908, make a personal and careful inspection of the said properties, and believe that such a division can be made in the manner fully explained in the statement hereto attached.

I find that the Hacienda "Santa Cruz" described in the Decree as

97 containing 314 acres, is, in two separate sections, one containing 264 58 100 acres, known as "Santa Cruz" proper, and the other known as "La Pastosa" separated from the former by a strip of the Hacienda "San Antonio" and situated on the south side of a vecinal road leading from Bayamon to the Barrio "Guainabo," planted in Cane and containing 67 34 100 acres, making in all 331 92 100 acres or 17 92 100 acres more than mentioned in the decree. This property I assessed in the sum of \$33,353.70 in the manner set forth in the statement hereto attached.

The piece known as "La Pastosa" assessed by me in the sum of \$2,693.60 being all about the same class of land, I would suggest it being divided in half giving each party an equal frontage on the road leading to Guainabo, and cutting a line through the property so as to give an equal acreage, this would require the employment of a Surveyor.

The piece known as "Santa Cruz" can be divided by taking the road which leads from Bayamon in, and clear through the property to the Bayamon River, which is one of its boundary lines, as a dividing line; the divided parts being referred to as "Left" and "Right" in the plans hereto attached, and more clearly explained by a map furnished me by Mrs. Van Syckel, and made by M. M. Mora, a Public Surveyor on June 6th, 1907, which shows both "Santa Cruz" and "La Pastosa." This piece I have assessed in the sum of \$30,660.10 in the manner more fully described in the statement attached hereto.

A division of the piece known as "Plantaje" can be made by beginning at the Eastern boundary measuring west 80 Acres, which are planted in Pineapples, Grape-fruit, and Oranges; also containing several buildings. This section with its crops I have assessed in the sum of \$11,700.00. The remaining 127 43 100 acres, 61 of which are planted in Cane and the balance in Pasture Woodland and Swamp, I assessed in the sum of \$11,322.20. This will also require the employment of a surveyor.

Valuation of the Properties.

"Santa Cruz."

110 25 100	Acres.	1st Class Cane land, at	\$150.00...	\$16,537.50
52 9 100	"	2nd " " "	80.00...	4,167.20
58 71 100	"	1st " Pasture	100.00...	5,871.00
31 66 100	"	2nd " " "	50.00...	1,583.00
2 59 100	"	Plaza	100.00...	259.00
9 28 100	"	Roads, Boundaries, etc.	80.00...	742.40
				<hr/>
264 58 100	"			29,160.10
				<hr/>
Buildings, Sheds, etc.				1,500.00
				<hr/>
				\$30,660.10
				<hr/>
Personal Property on same, as per Inventory				5,869.50
				<hr/>
Total				\$36,529.60

"La Pastosa."

67 34 100 Acres. 3rd Class Cane Land at \$40.00.... \$2,693.60

"Plantaje."

150	Acres.	Cane and Fruit land at \$75.00....	\$11,250.00
42	"	Pasture and Wood " " 50.00....	2,100.00
15-43	"	" " Swamp " " 40.00....	617.20
		Buildings, Sheds Etc.....	1,000.00

207 43 100 " 14,957.20

99 (14,967.20)

22 Acres Planted in Pineapples, at 100.00..... 2,200.00

25 " " " Oranges, Grape fruit — 100.00.... 2,500.00

61 " Sugar Cane 20 Ton per acre, at 2.75..... 3,355.00

\$23,022.20

Personal property on same, as per Inventory..... 1,708.00

\$24,530.20

Suggestion for the Division of "Santa CruzB" and Comparative Values.

Left Side of Road.

1st Class Cane Land:

No. 1..... 16 74 100 Acres at \$

No. 2..... 24 04 100 "

No. 3..... 9 07 100 "

Total 49 85 100 " at \$150.00.... \$7,477.50

2nd Class Cane Land:

No. 5..... 11 25 100 "

" 7..... 7 80 100 "

Total 19 05 100 " " 80.00.... 1,524.00

1st Class Pasture Land:

No. 18..... 6 20 100 "

" 16..... 4 97 100 "

" 17..... 14 35 100 "

" 15..... 7 29 100 "

" 14..... 3 00 100 "

" 13..... 1 36 100 "

" 23..... 1 30 100 "

" 12.....	1 93 100	"		
" 19.....	9 30 100	"		
Total	49 70 100	" "	100.00.....	4,970.00
Roads, Boundaries, etc.,	4 64 100	" "	80.00.....	371.20
Total				
Acres, 123 24 100	"	Total Value...	\$14,342.70	

100

Right Side of Road.

1st Class Cane Land:

No. 6.....	3 07 100 Acres			
" 8.....	7 63 100	"		
" 9.....	24 70 100	"		
" 10.....	10 00 100	"		
" 11.....	15 00 100	"		
Total	60 40 100	"	at \$150.00.....	\$9,060.00

2nd Class Cane Land:

No. 4.....	1 17 100	"		
" 10.....	8 98 100	"		
" 11.....	22 89 100	"		
Total	33 04 100	" "	80.00.....	2,643.20

1st Class Pasture Land:

No. 20.....	9 01 100	" "	100.00.....	901.00
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2nd Class Pasture Land:

No. 21.....	31 66 100	" "	50.00.....	1,583.00
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Plaza or Square:

No. 22.....	2 59 100	" "	100.00.....	259.00
Roads, Boundaries, etc.,	4 64 100	" "	80.00.....	371.20
Buildings, Sheds, etc.,				1,500.00

Total\$15,317.40

Suggestion for the Division of "Plantaje" and Comparative Values

(No. 1.)

80 Acres Fruit and Cane land,	at	75.00.....	\$6,000.00
22 acres of pine-apples	"	100.00.....	2,200.00
25 " " Oranges & Grape-fruit	"	100.00.....	2,500.00
Buildings, Sheds, etc.,			1,000.00
80 Acres			\$11,700.00

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(No. 2.)

70	acres Fruit and Cane Land, at \$75.00	\$5,250.00
42	" Pasture and Wood " B 50.00	2,100.00
15 43 100	" " " Swamp " " 40.00	617.20

127 43/100 Acres.

61 Acres Planted in Cane, 29 Ton		
per acre	2.75	3,355.00

\$11,322.20

The Commissioner has had constantly in mind the Court's instructions in regard to the division of these properties, and reports that the plans for a division here are the only ones which he can present as feasible and in accordance with said instructions.

Furthermore the different classes of land are about equally distributed between the two parts of the division neither part having a large excess of any class of land, and the values of the separate parts are as nearly equal as they can be made.

This manner of division does not impair the value of the separate parts considering the uses to which they have been applied.

Following the Court's instructions all parties were summoned and an effort made to arrive at an agreement on a division or exchange of their respective interests in the different properties, but without result.

This report is hereby respectfully submitted, together with the plans and maps used to obtain the information reported herein.

(Signed)

JOHN L. HAAS,

Commissioner.

San Juan, Porto Rico, August 21, 1908.

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Total Value of Properties.

"Santa Cruz"	\$30,660.10
"La Pastosa"	2,693.60
"Plantaje"	23,022.20

\$56,375.90

Personal Property at "Santa Cruz"	\$5,869.50
Personal Property at "Plantaje"	1,708.00
	<hr/>
	7,577.50

Total \$63,955.40

Decree Rendered under said Report.

Filed Sept. 12, 1908.

In the District Court of the United States for Porto Rico, Sitting at
San Juan.

Equity. No. 453.

ADA ELMIRA HIRST VAN SYCKEL et al.

vs.

SOBRINOS DE EZQUIAGA et al.

*Decree of the Court Adjudging a Division of the Properties Which
Are the Subject of This Suit.*

The Court having heretofore considered the bill of complaint herein, and the evidence offered in support thereof, and having on the 28th day of August, 1908, entered an order providing for the division and partition of the properties which are the subject of this suit, now renders this, its partial final decree as follows:

Regarding the property known as "Santa Cruz", and which is described more particularly in the bill of complaint, it is,

Ordered, adjudged and decreed that complainants shall be entitled to all of that portion thereof, together with the fixtures and improvements thereon, lying south of the center line of the road which traverses the said property, which said road enters the said property at the north-west side thereof and terminates at the Bayamon River on the east side thereof. The said road enters the said property between Parcels 3 and 4, as designated on the map made and prepared by the surveyor Manuel Martinez Mora on June 6, 1907, and terminates at the river, between parcels 17 and 20, as indicated on said map.

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In addition to the portions above allotted to the complainants, there will also be allotted to them all of Parcel or Lot No. 19, as appears upon said map, lying east of the Bayamon River, and said to contain 9.30 cuerdas.

The road hereinabove referred to, which divides the portions above described, as now established, shall be a common road between the two properties from the point where it enters said farm at Bayamon, to the river, as aforesaid, and shall be kept open for their benefit and that of their successors, such right to run with the land.

It is further ordered, adjudged and decreed that the portion of the property known as "La Pastosa", lying adjacent to the said property "Santa Cruz", shall be divided by drawing a line through the same from north-east to south-west so as to give each one exactly one-half of the land and an equal frontage on the road (Camino Vecinal) that leads to Guainabo, on the north-east side of this whole tract, and complainants shall take the northerly one-half of said property.

Regarding the property "Plantaje", it is ordered, adjudged and decreed that complainants shall take the most easterly eighty cuerdas

of the same, with all fixtures and improvements thereon, all as appears by a map of the said surveyor Manuel Martinez Mora, dated December 11, 1899, and also heretofore filed with the report of John L. Haas, Division Commissioner.

No owelities of any kind shall be paid by either of these parties to the other.

For the purposes of inscription in the Registry of Property of the different portions which by this decree are allotted to the respective parties, the Court will appoint a surveyor to make an accurate survey of the properties as now here divided, and to establish the boundaries, respectively, thereof, so that the same may be inscribed in favor of each party, respectively, as a separate finca or estate in the appropriate Registry of Property.

Upon the coming in of the report of the surveyor, power is reserved to enter up a supplemental decree herein, fixing and establishing the boundaries of the properties which by this decree are established in a general way, and the costs and expenses of such survey shall be taxed by the Court upon the parties hereto, one-half to complainants and one-half to defendants.

Power is further reserved to compel the parties hereto, respectively, to execute such deeds as may be necessary by the laws of Porto Rico to make effective this and any other decree the Court may enter, so as to enable the parties to inscribe their respective portions as separate and distinct estates in the appropriate Registry of Property.

The maps and plans hereinabove referred to, made by the said surveyor, Manuel Martinez Mora, and this decree, shall be taken and accepted by the parties hereto as the basis for the surveys to be hereinafter made in accordance with these orders and this decree.

San Juan, Porto Rico, September 12, 1908.

(Signed)

B. S. RODEY, Judge.

106 *Motion of Defendants for Approval of Report, etc.*

Filed May 15, 1909.

In the District Court of the United States for Porto Rico, Sitting at San Juan.

Equity. No. 453.

ADA ELMIRA HURST VAN SYCKEL et al.

vs.

SORRINOS DE EZQUIAGA et al.

Motion of Defendants Sorrinos de Ezquiaga for a Supplemental Decree Approving the Report of the Commissioner Appointed to Divide the Properties Involved in This Suit, to Approve the Plans of the Surveyor, Armando Morales, and to Authorize the said Commissioner to Execute Appropriate Deeds to the Parties Giving Effect to the Division Decreed by the Court.

Defendants, Sorrinos de Ezquiaga, represent that on the 8th day of August, 1908, this Court rendered its final decree in this cause,

determining the issues as between the parties hereto, and by the terms of the said decree, as well as by subsequent decrees and orders, provided for a division or partition of the real-estate involved in this suit—namely, the properties known as "Santa Cruz", "Plantaje", and "Pastosa".

Subsequently, John L. Haas, Esq., was appointed Commissioner for the purpose of making a division of the said real-estate, and the said Commissioner has made and returned into Court his report, to which no objections have been filed by the parties.

Thereafter, the said Commissioner, under the authority and direction of the Court, employed the Surveyor and Engineer, Armando Morales, Esq., properly to establish the boundary-line of the said properties, in order to carry out the decrees and orders of this Court providing for a division or partition thereof.

107 The said Surveyor, Morales, has prepared maps or plans showing the division as made and decreed by this Court. Said plans are filed as a part of the records of this cause, and are all dated November 28, 1908.

In order that the division of the said properties so made and decreed by this Court, and as set forth and described in the report of the said Commissioner, Haas, as well as in the said maps made and filed by the said Surveyor, Armando Morales, may be duly inscribed in the appropriate registry of property in favor of the respective parties, between whom the said properties have been partitioned or divided, Defendants herein pray for an order of Court:

(1) Approving the report of the said Commissioner, John L. Haas.

(2) Approving the said plans of the Surveyor, Armando Morales.

(3) Directing the said Commissioner, John L. Haas, to execute before a Notary Public such deeds or documents as may be necessary under the laws of Porto Rico to inscribe in the names of the respective parties hereto the portions of the said properties as divided and partitioned by the decrees of this Court.

(Signed)

F. H. DEXTER,

Attorney for Defendants Sob. de Ezquiaga.

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Decree of May 15, 1909.

Journal No. 5, Page 247.

453. Equity.

ADA HIRST VAN SYCKEL et al.

vs.

SOBRINOS DE EZQUIAGA et al.

And now on this day comes Francis H. Dexter, solicitor for the respondents, (N. B. K. Pettingill solicitor for the complainants being present and neither consenting nor objecting thereto) and said Dexter presents a motion asking in detail for a supplementary decree herein covering various matters necessary in the premises; and the Court having examined said motion and petition, and having heard

said counsel in its favor, and being fully advised in the premises, orders the said motion and petition to the files, and grants each and every of the requests made therein, and it is therefore:

Ordered, adjudged and decreed:

First. That the report of the Commissioner John L. Haas, appointed herein to divide the land in controversy, be, and the same hereby is approved:

Second. That the plans of the surveyor Armando Morales heretofore made and filed in this cause under the order of the Court, be, and the same hereby are, approved, and:

Third. That the said Commissioner John L. Haas be, and he hereby is required to execute before a Notary Public such deeds or documents as may be necessary under the laws of Porto Rico to inscribe in the names of the respective parties hereto the portions of the said properties as divided and partitioned by the previous decrees of this Court. The same to be done without any additional compensation to the said Haas for said services, and this supplementary decree to be a sufficient warrant to the proper Registrar of Property for so inscribing said property and recording such deeds.

109 *Motion of Defendant for a Further Supplemental Decree.*

Filed June 10, 1909.

In the District Court of the United States for Porto Rico, Sitting at San Juan.

ADA ELMIRA HIRST VAN SYCKEL et al.

vs.

SOBRINOS DE EZQUIAGA et al.

Motion of Defendants Sobrinos de Ezquiaga for a Modification of the Decree.

Defendants, Sobrinos de Ezquiaga, represent that by the decree and orders of this Court heretofore made and entered in this cause it was provided that a division of the various properties the object of this suit should be made, and that for the purpose of enabling the properties as divided to be inscribed in the Registry of Property in the names of the respective parties entitled thereto that the Commissioner heretofore appointed by this Court, John L. Haas, Esq., should execute such deeds as might be necessary and proper under the laws of Porto Rico for the purpose.

These defendants state that in pursuance of such orders and decrees the Notary Public Eduardo Acuña, Esq., is now engaged in the preparation of such deeds, but the said Notary represents that in the decree heretofore entered there is a failure to adjudicate or assign affirmatively to Defendants Sobrinos de Ezquiaga the portion of the properties in litigation intended to be assigned to them. The said orders and decrees of this Court affirmatively award and adjudicate

to the Complainants the portions to them assigned, and it is necessary for the purposes of the Registry of Property to have an affirmative adjudication in favor of these Defendants.

They, therefore, pray that a Supplemental Decree be entered awarding and adjudication to these Defendants the portions of the properties in litigation which will remain after the separation therefrom of the portions assigned to Complainants.

(Signed)

F. H. DEXTER.

Attorney for Defendants.

San Juan, Porto Rico, June 10, 1909.

110

Supplemental Decree.

Dated June 10, 1909.

In the District Court of the United States for Porto Rico, Sitting at San Juan.

No. 453. Equity.

ADA ELMIRA HIRST VAN SYCKEL et al.

VS.

SORRINOS DE EZQUIAGA et al.

Supplemental Decree for the Purpose of Making More Explicit the Adjudication of the Portions of the Properties Involved in this Suit.

On this 9th day of June, 1909, appear in open Court Defendants Sobrinos de Ezquiaga, by their attorney, Francis H. Dexter, Esq., and present a Motion for a modification of the decrees and orders heretofore entered in this cause, or that a Supplemental Decree shall be entered making more definite and certain the assignment or setting apart of the portions of the lands involved in this suit which have been awarded to the said Defendants, Sobrinos de Ezquiaga.

It appearing to the Court that for the purpose of the registry laws of Porto Rico it is advisable or necessary to make in favor of said Defendants, Sobrinos de Ezquiaga, a more definite or specific award than has been made in and by the decrees and orders heretofore entered; and it appearing that no prejudice can result to the Complainants by the granting of such modified or supplemental decree,—it is now hereby Ordered, Adjudged and Decreed that the Defendants, Sobrinos de Ezquiaga, shall be entitled to, and there is hereby set apart and awarded to them, all of those parts or portions of the properties "Santa Cruz," "Plantaje," and "Pastosa," the object of this suit, which remain after the division of such properties, already made, and the assignment therefrom of the portions awarded

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to the Complainants, as appears by the report of the Commissioner, John L. Haas, Esq., the plans of the Engineer,

Armando Morales, Esq., dated November 28, 1908, and the previous orders and decrees of this Court.

It is hereby further Ordered, Adjudged and Decreed that Complainants Ada Elmira Hirst Van Syckel, in her own right, and as the widow of Paul Van Syckel, and also as Administratrix of the estate of the said Paul Van Syckel, and also as Guardian of the estate of the minor children, Margarita Ethel, Barbara Paul, William Henry, John Archbold, and Alma Louise Van Syckel, shall appear in the execution of the proposed deed, in order that she in her said capacities may release to Defendants, Sobrinos de Ezquiaga, all right, title and interest which the said Paul Van Syckel, or which she, or the said minor children, may have in the portions of properties assigned to the said Defendants, Sobrinos de Ezquiaga, and in order that she may receive all the right, title and interest of the said Defendants, Sobrinos de Ezquiaga, in and to the portions of the properties assigned to Complainants under the decrees of this Court.

And it is further Ordered, Adjudged and Decreed, that all costs which have accrued herein between the date of the decree of August 7, 1908, to and including May 15, 1909, shall be paid one half by complainants and one half by respondents. But that, as all proceedings since and after May 15, 1909, regarding this supplemental decree, the deed thereunder, etc., are for the exclusive benefit of the respondents the same shall be at their exclusive cost.

The appropriate Registrar of Property will inscribe in his Registry the deed so to be executed for the portions of the said properties assigned to the Defendants, Sobrinos de Ezquiaga.

(Signed)

B. S. RODEY, *Judge*.

112

Petition of Appeal.

Filed April 15, 1911.

In the United States District Court for Porto Rico.

No. 453, San Juan.

ADA E. H. VAN SYCKEL et al.

vs.

SOBRINOS DE EZQUIAGA et al.

Ada E. H. Van Syckel, in her own right, and Margaret Ethel, Barbara Paul, William Henry, John Archbold and Alma Louise Van Syckel, by the said Ada E. H. Van Syckel, as their next friend, complainants in the above cause, conceiving themselves aggrieved by the final decrees made and entered herein on the 15th day of May, and 10th day of June, A. D. 1909, do hereby appeal from said final decrees to the Supreme Court of the United States for the reasons specified in an assignment of errors to be filed herein; and they pray that this their appeal may be allowed, and that a transcript of the record and proceedings in said cause upon which said final decree

was made, together with the statement of the facts in the nature of a special verdict filed therein on the 25th day of August, 1908, as provided by law, duly authenticated, may be sent to the said Supreme Court of the United States at Washington.

(Signed)

N. B. K. PETTINGILL

Counsel for Complainants-Appellants.

113

Order Allowing Appeal.

Filed May 4, 1911.

In the United States Supreme Court for Porto Rico.

No. 453, San Juan.

ADA E. H. VAN SYCKEL et al.

VS.

SORRINOS DE EZQUIAGA et al.

The petition of complainants herein, by their solicitor N. B. K. Pettingill, praying for an appeal from the final decree in this cause coming on now to be heard, it is hereby ordered that an appeal to the Supreme Court of the United States be, and the same hereby is, allowed as prayed for; and that a certified transcript of the record and such proceedings as may be pertinent taking place after the former appeal entered herein on the 8th day of August, 1908, be forthwith transmitted to said Supreme Court of the United States at Washington.

It is further hereby ordered that the bond to be given by said complainants on said appeal shall be in the penal sum of Three Hundred Dollars (\$300,) conditioned for the payment of costs as provided by law, and such bond having been duly executed and being now presented is duly examined and hereby approved.

Done and ordered this 23rd day of April, 1911.

(Signed)

JOHN J. JENKINS, *Judge.*

114

Bond on Second Appeal.

Filed May 4, 1911.

In the District Court of the United States for Porto Rico.

No. 453, San Juan.

ADA E. H. VAN SYCKEL et al.

VS.

SORRINOS DE EZQUIAGA et al.

Appeal Bond.

Know all men by these presents, that we, Ada E. H. Van Syckel as principal, and R. L. Holmes and R. H. Todd, as sureties, are held

and firmly bound unto Juan José Arsuaga, José Pío Arsuaga, Pedro Arsuaga and Nicasio Arsuaga, as partners under the name of Sobrinos de Ezquiaga, and Paul A. English, in the penal sum of Three Hundred Dollars, for the payment whereof well and truly to be made to said obligees, their executors, administrators or assigns, we do bind ourselves, our heirs, executors, and administrators, jointly and severally firmly by these presents.

Sealed with our seals and dated this 23rd day of April, A. D. 1911.

Whereas, lately at a session of the District Court of the United States for Porto Rico a final decree was rendered in the above entitled and numbered suit partially against the said complainants, and they, having obtained from said court an order allowing an appeal to the Supreme Court of the United States to reverse said decree, and a citation is about to be issued upon said appeal in accordance with law:

Now, the condition of the above obligation is such that, if said complainants above named shall prosecute their said appeal to effect and shall answer all costs that may be awarded against them, if they fail to make their plea good, then the above obligation is to be void, else to remain in full force and virtue.

(Signed)	ADA H. VAN SYCKEL,	[SEAL.]
	R. H. TODD,	[SEAL.]
	R. L. HOLMES,	[SEAL.]

Witness:

(Sgn.) N. B. K. PETTINGILL.

Approved, this 23rd day of April, 1911.

(Signed) JOHN J. JENKINS, *Judge*.

In the District Court of the United States for Porto Rico,

453. Equity.

ADA ELMIRA HIRST VAN SYCKEL et al.

vs.

SOBRINOS DE EZQUIAGA et al.

I, Rafael Guillermety, Clerk of the District Court of the United States for Porto Rico, do hereby certify the foregoing one hundred and forty-four pages, numbered 1 to 144 inclusive, to be a full, true and correct copy of the record and proceedings of the above and therein entitled cause requested in the preceipe of complainants, as the same remain of record and on file in the Office of the Clerk of said Court.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the District Court of the United States for Porto Rico, at San Juan, P. R., this 6th day of June, A. D. 1911.

[Seal United States District Court for the District of Porto Rico.]

RAFAEL GUILLERMETY,
Clerk U. S. District Court for P. R.

117 [Endorsed:] No. 453. Equity. In the District Court of the United States for Porto Rico. Ada Elmira Hirst Van Syckel et al. vs. Sobrinos de Ezquiaga et al. Appeal Record.

118 In the United States District Court of Porto Rico.

No. 453. San Juan.

ADA E. H. VAN SYCKEL et al.

vs.

SOBRINOS DE EZQUIAGA et al.

Citation.

UNITED STATES OF AMERICA. ss:

The President of the United States to Juan José Arsuaga, José Pío Arsuaga, Pedro Arsuaga, and Nicasio Arsuaga, as partners under the firm name of Sobrinos de Ezquiaga, and to Francis H. Dexter, their counsel of record, and to Paul A. English, Greeting.

You and each of you, are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within sixty days from the date of this writ, pursuant to an appeal duly allowed and entered in the Clerk's Office of the District Court of the United States for Porto Rico, in a suit wherein Ada E. H. Van Syckel in her own right and Margaret Ethel Van Syckel, Barbara Paul Van Syckel, William Henry Van Syckel, John Archbold Van Syckel and Alma Louise Van Syckel, by said Ada E. H. Van Syckel as their next friend, are appellants, and you are appellees (except said Francis H. Dexter, your counsel), to show cause, if any there be, why the decree rendered against the said complainants and appellants, as in said order allowing an appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Hon. John J. Jenkins, Judge of the District Court of the United States for Porto Rico, and the seal of said court this 26th day of April, A. D. 1911.

[Seal United States District Court for the District of Porto Rico.]

JOHN J. JENKINS, *Judge.*

SAN JUAN, P. R., May 12, 1911.

I hereby accept service of the above citation.

PAUL A. ENGLISH.

119

Return on Service Writ.

UNITED STATES OF AMERICA,

The District of Porto Rico, ss:

I hereby certify and return that I have served the annexed "Citation" on the therein-named Francis H. Dexter, as Attorney of Record for the within named Juan José Arsuaga, José Pío Arsuaga, Pedro Arsuaga, Nicasio Arsuaga, as Partners under the firm name of Sobrinos de Ezquiaga, by handing to and leaving a true and correct copy thereof with "Francis H. Dexter," "Attorney of Record," personally at San Juan, P. R., in said District, on the 6th day of May, A. D. 1911.

The other Defendant, Paul A. English, not served by order of the Attorney for the Plaintiffs.

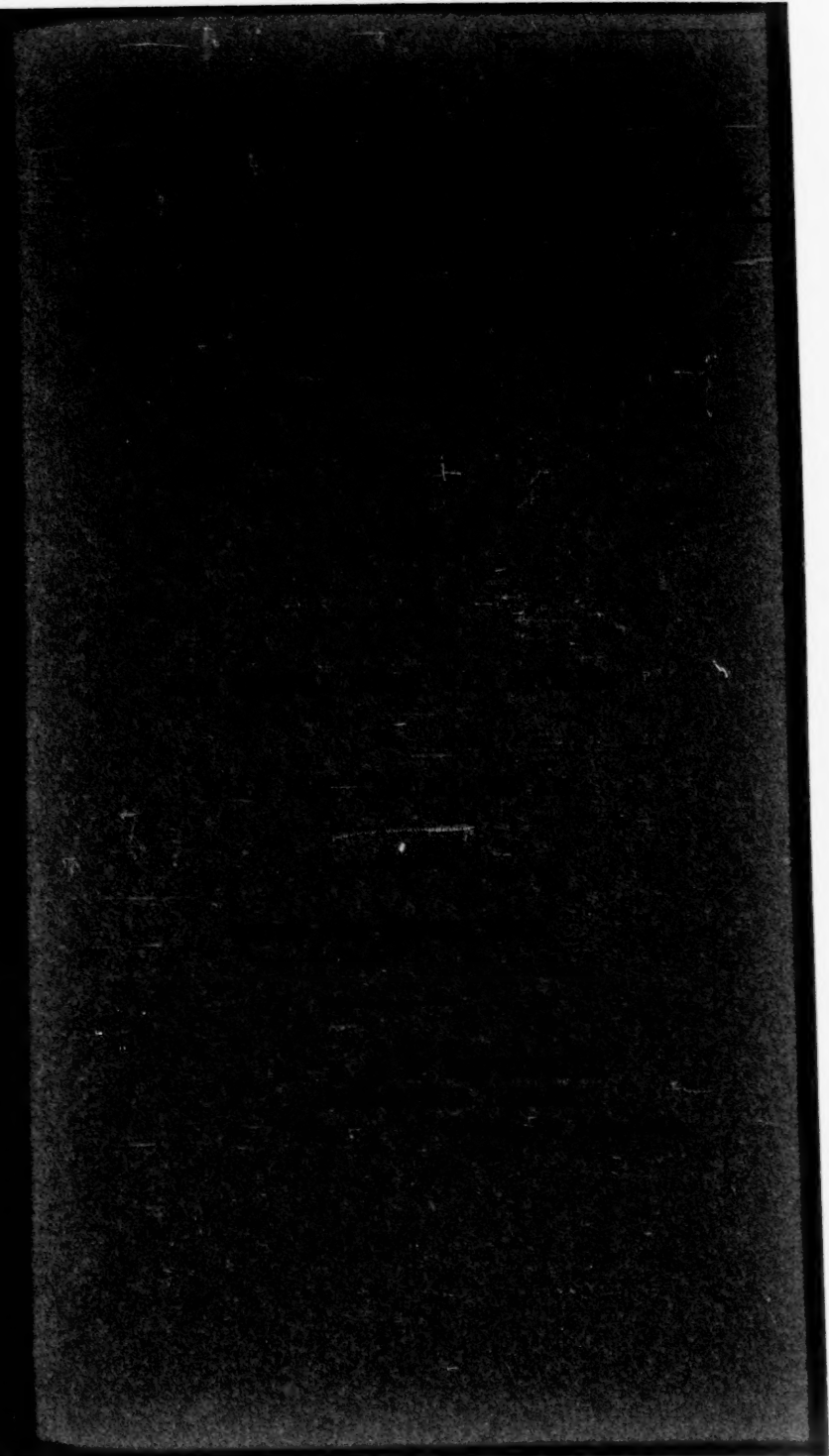
H. S. HUBBARD,

U. S. Marshal.

T. E. BURNETT, *Deputy.*

120 [Endorsed:] No. 453. Eq. In the District Court of the United States for Porto Rico. Ada E. H. Van Syckel et al. vs. Sobrinos de Esquiaga et al. "Citation" to Supreme Court. N. B. K. Pottingill, Att'y — Plaintiffs. Marshal's fees: 1 Service, \$2.00; Expenses, —.

Endorsed on cover: File No. 22,819. Porto Rico D. C. U. S. Term No. 69. Ada E. H. Van Syckel, in her own right, and Margaret Ethel Van Syckel et al., by Ada E. H. Van Syckel, their next friend, appellants, vs. Juan Jose Arsuaga et al., partners under the firm name of Sobrinos de Ezquiaga, and Paul A. English. Filed July 25th, 1911. File No. 22,819.



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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 69.

ADA ELMIRA HIRST VAN SYCKEL

vs.

JUAN JOSÉ ARSUAGA ET AL.

BRIEF FOR APPELLANTS.

Statement of Facts.

This was a suit in equity begun by appellants, as the heirs of Paul Van Syckel, deceased, by the filing of their bill of complaint in March, 1907, against the defendants composing a mercantile partnership under the style of "Sobrinos de Ezquiaga," and against Paul A. English individually, for the purpose of causing the partition and distribution of the assets of two agricultural partnerships, one being styled "P. Van Syckel and Company," and the other "Santa Cruz Sugar Company," of which latter only was the defendant English a member.

There was no dispute as to the interest of the defendant English, nor as to the proportions of the other parties in the general assets. In fact *the answer denied none of the alle-*

gations of the bill, but appellees by cross-bill asserted that a certain leasehold right existing in the name of Paul Van Syckel, ancestor of complainants, really belonged to the partnership and had been merged in the fee title of the latter. The complainants in turn contended that upon the face of their cross-bill defendants were estopped from any such claim, that its allegations were legally insufficient to sustain such a claim, and that, even if otherwise sufficient, they constituted a fraud in law, from the consequences of which equity will not relieve. The controversy upon this appeal involves solely these questions affecting this leasehold right.

The bill of complaint (Record, pages 1-6) alleged that said firm of P. Van Syckel & Company had been formed in the month of June, 1900, between Paul Van Syckel and the defendant firm of Sobrinos de Ezquiaga, said Van Syckel having contributed to said partnership a certain mortgage upon a plantation called "Santa Cruz," as well as certain real estate and other personal property not material to specify, the total value of which was thirty thousand pesos, provincial money; and Sobrinos de Ezquiaga had obtained its half interest in said partnership assets by paying to Mr. Van Syckel half of the above value, to wit, fifteen thousand pesos in cash. The agreement of partnership was attached as Exhibit "C" to the bill, and is found upon pages 10-14 of the printed record. Under the above agreement this partnership was to continue for the term of two (2) years, but was afterwards extended by the execution of a similar agreement under like terms for the additional period of four (4) years. This supplemental agreement was attached to the bill as Exhibit "D," and is found on pages 14-17 of the printed record.

From the allegations of the bill it appeared that the mortgage upon the plantation "Santa Cruz," so contributed by said Van Syckel to the assets of the partnership of P. Van Syckel & Company, was obtained by him in the following manner:

One Montilla, being the owner of said plantation, which was composed of three hundred and fourteen (314) *cuerdas*

(equivalent to practically the same number of acres), executed three (3) mortgages upon the same, at various dates, amounting in the aggregate to eleven thousand (11,000) pesos, provincial money, in favor of one Marxuach, and also thereafter executed in favor of said Van Syckel a lease for an indeterminate period of time upon all of said plantation except thirty-five (35) cuerdas, which lease was to continue at the option of said Van Syckel, at a stipulated rental of one hundred and five (105) pesos, equivalent to sixty-three (63) dollars in gold, per month.

After the acceptance of said lease, said Van Syckel, in order to make the same recordable under the law, executed a further notarial document whereby he bound himself to continue said lease for a term of at least six (6) years, and said lease was then recorded. (See 1 Castro, Dec. de P. R., 12.)

Thereafter the lessor, Montilla, desiring to rid himself of said lease, entered into a combination with his mortgagee, said Marxuach, whereby the latter was to foreclose his said mortgages in order to eliminate the leasehold right of said Van Syckel, and, after the accomplishment of that object, was to restore the title of the property to said Montilla.

Said Van Syckel thereupon brought suit against both Montilla and Marxuach, setting up the existence and purpose of the combination between them and praying the court to allow him to pay off the said mortgages of Marxuach and upon such payment to be subrogated to him in his mortgage rights, and such relief was granted to Van Syckel in said suit. As a result thereof, the proposed foreclosure of said mortgages was enjoined, and the mortgagee, Marxuach, upon the payment of the amount due him thereunder, in March, 1900, executed an assignment of his said mortgage rights to Van Syckel.

The bill proceeded to allege that at the time the partnership of P. Van Syckel & Company was formed it was agreed between the partners, Van Syckel and Sobrinos de Ezquiaga, that the mortgage rights upon the plantation "Santa Cruz," which he was transferring to form a part of the assets of said

partnership, should be subject to his individual rights under his said lease of the 279 cuerdas thereof; and that, in order that such agreement should be explicitly and solemnly recognized, a notarial instrument was drawn up to that effect and executed on July 27, 1901, by said parties. This instrument was attached to the bill as Exhibit "E" (pages 17-19 of the printed record); and, as its purpose and effect is the principal contention in the case, its pertinent parts deserve quotation here.

After stating the circumstances which authorized one Arsuaga to represent P. Van Syckel & Company, it referred to and described the three mortgages which that firm possessed over "Santa Cruz" and the manner in which said firm had acquired them. It then also described the leasehold right of Van Syckel over the 279 cuerdas. The purpose of the document is then expressed as follows:

"*Fourth.* And the industrial partnership of P. Van Syckel & Company, represented by its managers, Sobrinos de Ezquiaga, and for and in its name Don Miguel Luis Arsuaga y Garayalde, agrees: That all and whatever rights of preference the real rights of mortgage of which review has been made constituted over the estate 'Santa Cruz' described have or may have for all cases, including that of judicial claim, all these they postpone to the real right of lease mentioned in favor of Mr. Paul Van Syckel and his successors (causahabientes), renouncing the right which they might have to ask for the rescission of said lease.

"Mr. Paul Van Syckel, on his part, says that he accepts this document in all its parts."

The bill further alleged that after the execution of the foregoing document—to wit: in September of the same year—Montilla not having paid either principal or interest on said mortgages, said firm of P. Van Syckel & Company, which had become the owner of them upon its formation, as above stated, began suit to foreclose the same, and, as a result of said suit, acquired title to said plantation "Santa

Cruz" by adjudication at the foreclosure sale in default of other bidders, but with the express reservation in said adjudication of the leasehold right still existing in said Paul Van Syckel personally, and that said leasehold right still continued in existence and had been recognized by defendants Sobrinos de Ezquiaga during the existence of said firm of P. Van Syckel & Company.

The bill further alleged the circumstances attending the formation in the year 1905 of the firm called "Santa Cruz Sugar Company" and the nature of its business; but none of these allegations are material to the matters involved in this appeal except the allegation that the articles of agreement of said sugar company, to which both Van Syckel and appellees were parties, provided that it should pay the rental of said plantation "Santa Cruz" "to the firm or corporation entitled thereto" without attempting to identify the parties thereby indicated. It also alleged that both the firm of P. Van Syckel & Company and the subsidiary firm of "Santa Cruz Sugar Company" expired by limitation in the month of June, 1906, unless, indeed, they had been terminated by the death of said Paul Van Syckel in the month of December, 1905. All the documents to which reference was made in the bill were attached as exhibits thereto (pages 7-22).

The bill prayed that said two partnerships might be decreed to have expired by limitation of time, and that the several tracts of land and other assets belonging to said partnerships might be decreed to be partnership property and might be divided between the partners in said partnerships according to their respective shares, or sold if it should be found that no equitable division of the same could be made, but specifying that such division should be subject, so far as concerned the 279 cuerdas included in said lease of Paul Van Syckel, to the leasehold rights of the complainants as his heirs, which it was prayed might be recognized and confirmed.

The bill also prayed for a receivership and an accounting, as well as for general relief, but as no receiver was appointed it is considered that these prayers are not material to the matters involved in this appeal.

In due time Sobrinos de Ezquiaga filed their answer to the foregoing bill of complaint (pages 23-28), by which most of the allegations of said bill were admitted, except those relating to the prayer for the receivership, and no denial was made of the allegations in regard to the continued existence and validity of said lease of 279 cuerdas of said plantation "Santa Cruz" to said Paul Van Syckel, the ancestor of the complainants.

At the same time said defendants filed their cross-bill, with exhibits (pages 28-49), wherein many of the allegations of the original bill were reaffirmed, but it was alleged that at the time of the formation of the firm of P. Van Syckel & Company and the transfer of the mortgages upon said plantation "Santa Cruz" by said Paul Van Syckel to the firm of P. Van Syckel & Company, "it was intended by him and understood between him and defendants, Sobrinos de Ezquiaga, and such was the basis and consideration of the articles of partnership above referred to, that said firm of P. Van Syckel & Company should acquire all of the rights and title of every kind and character, whether as mortgagee or lessee, which the said Van Syckel had or might have in and to the said 'Santa Cruz'" (page 28).

The cross-bill proceeded to allege that at that time the said Montilla, the original owner of the property, was complaining of the assignment of the mortgages from Marsaach to Van Syckel, and was threatening legal proceedings to annul such transfer as well as said lease to Van Syckel, and that upon the advice of one Acuña, who was during all of the time referred to acting as the attorney both for Van Syckel personally, the firm of P. Van Syckel & Company, and defendants Sobrinos de Ezquiaga, it was agreed between said firm of P. Van Syckel & Company and said Van Syckel personally that, in order to provide against the contingency

of the payment of said mortgages by Montilla or the annulment of the transfer thereof from Marxuach to Van Syckel, efforts should be made to establish the existence of said lease in favor of Van Syckel, and in that manner to enable Van Syckel or said firm to continue in the use and possession of "Santa Cruz" under said lease in the event that said firm should not be able to foreclose said mortgages and thus acquire the title in fee to said plantation; and that it was upon such advice, and for such reason only, that said Van Syckel and the said firm of P. Van Syckel & Company entered into and executed the notarial agreement whereby the rights of said firm under their mortgages were postponed or subordinated to the rights of Van Syckel under his said lease. It was further alleged that it was, however, understood and agreed between the parties thereto *at the time of its execution* that this notarial agreement:

"Should in no way, as between the said parties,
 " affect the unrestricted and unlimited rights which
 " the said P. Van Syckel & Company should or
 " might be entitled to in and to said Hacienda 'Santa
 " Cruz' by virtue of the assignment to the said firm
 " of the said mortgages, and of the subsequent fore-
 " closure thereof, as was intended and contemplated
 " by the said Paul Van Syckel and the said P. Van
 " Syckel & Company."

And that:

"The said firm of P. Van Syckel & Company
 " should proceed as promptly as possible to the fore-
 " closure of the said mortgage, and should bid in the
 " said Hacienda 'Santa Cruz' at the mortgage fore-
 " closure sale, and inscribe the title thereof in its
 " own name free from all claims, rights or interests
 " of the said Paul Van Syckel."

Said cross-bill further alleged that it was in accordance with such agreement that said firm of P. Van Syckel & Company began its suit to foreclose said mortgages, and under the foreclosure sale the said plantation was adjudicated to

P. Van Syckel & Company without any limitation or reservation whatsoever in favor of said Van Syckel, or any other person; that said Van Syckel had full knowledge of and consented to the result aforesaid, and that there resulted therefrom under the laws of Porto Rico a merger or confusion of rights by reason of which said lease no longer existed.

In further explanation of the alleged non-existence of said lease, paragraph IV of said cross-bill contains the following allegations (page 30):

"Defendants say that notwithstanding the acquisition by P. Van Syckel & Company absolutely of the said Hacienda 'Santa Cruz,' as aforesaid, the said firm, by agreement with the said Paul Van Syckel, and upon the advice of their said attorney, found it necessary, or advisable, apparently to recognize the supposed existence of the said lease, but defendants say this was done upon the advice of counsel, as above stated, for the purpose of successfully defending the action which was instituted by the said Emilio Montilla against P. Van Syckel and Company and José E. Marxuach on the fifth day of December, 1902, in the District Court of San Juan, for the purpose of annulling the transfer of the said mortgage to Van Syckel, and subsequently by him to P. Van Syckel and Company insofar as relates to the contribution by the said Paul Van Syckel to P. Van Syckel and Company of the said mortgage; and to secure a decree that neither Paul Van Syckel nor P. Van Syckel & Company had been legally in possession of said mortgage of Montilla, or that they had ever been subrogated to the mortgage rights of Marxuach; that P. Van Syckel and Company, by said supposed assignment, acquired only a personal action against Montilla for the amount of the said mortgage; also to set aside and annul the mortgage foreclosure proceedings aforesaid and the adjudication thereof to P. Van Syckel & Company.

"It was agreed and understood between Paul Van Syckel and the said firm of P. Van Syckel and Company that the latter would avail itself of the

" said lease and that the same should be recognized
 " in existence by either of the said parties only in the
 " event that the said suit of Montilla should be suc-
 " cessful and in that event that P. Van Syckel & Com-
 " pany should be deprived of the dominion owner-
 " ship of the Hacienda "Santa Cruz," which it had ac-
 " quired by virtue of the said foreclosure proceed-
 " ings."

Said cross-bill then further alleges that said Van Syckel at no time after the execution of said notarial agreement subordinating the mortgage rights of P. Van Syckel & Company to his leasehold rights made any claim that he was entitled to said leasehold, but, on the contrary, recognized and respected the absolute rights of said partnership as the sole and exclusive owner of said plantation except for the purposes above stated in paragraph IV, and that said P. Van Syckel & Company had with the knowledge and express authority of said Van Syckel leased said "Santa Cruz" at various times, and had collected the entire rent therefor; and it was further alleged that the partnership agreement of May 26, 1902, by which said firm of P. Van Syckel & Company was extended for four years, recognized and affirmed the non-existence of said lease, because it stated that said plantation formed a part of the capital of said partnership, and no reference was therein made to any claim or lease by the said Van Syckel as against the said plantation.

Said cross-bill therefore prayed the court to decree that said lease of Montilla to Van Syckel of said 279 cuerdas of said plantation "Santa Cruz" was no longer in existence or of any force or effect; that all the rights of said Van Syckel as lessee or mortgagee were transferred by him to and vested in said partnership, and that said partnership was the absolute owner of said plantation without any reservation in favor of said Van Syckel by reason of said lease.

To this cross-bill the complainants in the original bill filed their demurrer (pages 49-50) upon the general ground

of want of equity, and also upon the ground that the allegations of said cross-bill showed that the complainants therein did not come into court with clean hands with respect to the transaction from which they prayed to be relieved, as they averred that the same was not in its inception *bona fide*, but was a mere simulation and fiction to which they were parties.

This demurrer was overruled by the trial court (page 50). The original complainants, the defendants in the cross-bill, thereupon answered it, denying all its allegations respecting any agreement or understanding that the said notarial agreement subordinating the rights of the mortgagees to the rights of Van Syckel as lessee was not what it upon its face purported to be, and alleging that the reason why no mention was made of said lease in the articles of agreement extending the partnership of P. Van Syckel & Company was that the foreclosure suit by which the mortgage credit existing as an asset of the firm when originally constituted had been converted into a fee title to said property in no way affected said leasehold right (pages 51-53).

Replications having been filed to the respective answers to the bill and cross-bill, and evidence having been taken upon the respective issues therein involved, the trial court on the 31st day of July, 1908, rendered its opinion and decision, holding the complainants entitled to the distribution of the assets of said firms of P. Van Syckel & Company and Santa Cruz Sugar Company, but that the cross-complainants were entitled to the relief prayed for in their cross-bill, to the effect that the leasehold rights of complainants in the 279 cuerdas of the plantation "Santa Cruz" no longer existed and that the same should be canceled (pages 54-65).

In accordance with this opinion a preliminary decree was entered under date of August 7, 1908 (pages 65-68), and findings of fact and conclusions of law drawn up (pages 69-84). Certain rulings upon the admission and exclusion of

evidence were also included at the request of the appellants (pages 84-89). Thereafter a commissioner was appointed to have the lands involved surveyed and report to the court whether a partition in kind could be made without impairing their value, and, in case he reported in favor of division, to recommend one or more plans for such division. The report of the commissioner was in favor of partition in kind and a plan of partition was suggested (pages 94-99). Upon that report the court rendered its "partial final decree" indicating in general language the partition to be made, directing the appointment of a surveyor "to establish the boundaries" (page 100). Thereafter the surveyor filed his report and counsel for defendants moved the court for a further decree expressly approving the report of the commissioner, approving the plans which had been filed by the surveyor and directing the execution of the proper deeds between the parties. Upon that motion a further decree was entered in conformity with its prayer (pages 101-3), and thereafter upon the further motion of defendants the same was in some respects modified (pages 103-5).

Appellants originally appealed from the decree of August 7, 1908, believing that to be final in its character (pages 89-93); but this court, upon its own motion, dismissed that appeal because that decree was not considered final (220 U. S., 601). Whereupon appellants took a second appeal from the two subsequent decrees of May 15 and June 10, 1909, above described (page 105). This appeal was duly allowed (page 106) and the citation issued and served (pages 108-9).

In order that the sequence of the pertinent events involved in the questions now before the court may appear in clear and convenient form, we append the following chronological statement:

June 23, 1897.—Van Syckel obtained his lease from Montilla for 279 cuerdas of the plantation "Santa Cruz," to continue an indeterminate

period, which was recorded as the fourteenth inscription affecting said property.

March 16, 1900.—Three mortgages, aggregating 11,000 pesos, Mexican money, previously existing as a lien upon the whole 314 cuerdas of said plantation, were assigned to Van Syckel and assignment recorded as the fifteenth inscription.

June 1, 1900.—Partnership of P. Van Syckel and Company formed, by which Van Syckel assigned said mortgage liens to said firm as a part of the assets contributed by him, recorded as the seventeenth inscription (a lease of 35 cuerdas of the same property to one Gutierrez del Arroyo having been recorded as the sixteenth).

January or February, 1901.—Van Syckel went to live in Havana.

July 27, 1901.—Contract between Van Syckel and P. Van Syckel & Company, whereby the latter's rights under the mortgages were subordinated to Van Syckel's rights under his lease, recorded as the eighteenth inscription.

September 11, 1901.—Suit to foreclose said mortgage liens by summary process begun by P. Van Syckel & Company.

November 27, 1901.—Adjudication of the plantation "Santa Cruz" to P. Van Syckel & Company in said summary foreclosure proceedings, subject to the continued existence of the lease of 279 cuerdas to Van Syckel individually.

May 26, 1902.—Renewal of partnership agreement of P. Van Syckel & Company for four years.

December 5, 1902.—Suit begun by Montilla against both Van Syckel and P. Van Syckel & Company to annul all these transactions, including the lease to Van Syckel.

March 17, 1905.—Decision in said suit on Montilla's appeal to the Supreme Court of Porto Rico affirming the court below in denying his contentions and sustaining, among other things, the validity of Van Syckel's lease (Castro's Decision of Van Syckel's lease (8 Pr. Rep., 153.)

Appeal taken by Montilla to this court.

August 22, 1905.—Partnership of "Santa Cruz Sugar Company" formed.

December 27, 1905.—Paul Van Syckel died in Havana.

December 30, 1905.—Montilla suit settled and appeal abandoned.

Upon the record as thus constituted the appellants appear before this court and ask its consideration of the following

Assignment of Errors.

I.

The court erred in overruling the demurrer filed by appellants on the 15th day of June, 1907, to the cross-bill of appellees, Sobrinos de Ezquiaga.

II.

The court erred in concluding as matter of law from its findings of fact that the contract of lease executed on the 23d day of June, 1897, between Montilla and Van Syckel was at the time of said decree without legal force or effect and had ceased to exist.

III.

The court erred in concluding as matter of law from its findings of fact that the leasehold rights previously existing in said Paul Van Syckel were merged in the free title to said plantation, "Santa Cruz," acquired by the firm of P. Van Syckel & Company by virtue of the adjudication to it in the foreclosure suit against Montilla and as a result of their agreement set forth in said findings of fact, executed between said Paul Van Syckel and P. Van Syckel & Company.

IV.

The court erred in concluding as matter of law from its findings of fact that the deed of postponement executed on the 27th day of July, 1901, by Paul Van Syckel and P. Van Syckel & Company was at the time of said decree without legal force or effect as between the parties to this suit.

V.

The court erred as matter of law in concluding that appellees, Sobrinos de Ezquiaga, were entitled to the relief prayed for in their cross-bill.

VI.

The court erred in concluding as matter of law that said firm of P. Van Syckel & Company was the owner of said plantation "Santa Cruz" free from any claim on the part of appellants by virtue of said contract of lease (inserted in finding of fact numbered 2) in connection with the agreement subordinating the mortgage rights of said firm to said leasehold interest of Van Syckel (inserted in finding of fact numbered 8).

VII.

The court erred in concluding as matter of law that appellants were estopped from asserting their rights under said lease.

VIII.

The court erred in admitting certain testimony of Eduardo Acuña Aybar, a witness produced and examined on behalf of the appellees, Sobrinos de Ezquiaga, which testimony, together with the questions propounded to said witness which elicited the same, was as follows:

"Q. Now, Mr. Acuña, after you had given certain advice about the method of defending by both Paul Van Syckel personally and Van Syckel & Company against Montilla, what did Mr. Van Syckel do or say with respect thereto?

"A. He followed absolutely my advice and the lease of the 'Santa Cruz' estate remained standing purely as a means of defense against the suits of Montilla.

"Q. Did Mr. Van Syckel say anything to you with respect to the cancellation of the lease?

"A. Yes, sir; on several occasions he spoke to me about the subject of canceling the lease and I advised *on* (to) the contrary, because that lease was the means of defense against any suits that Montilla might bring during his lifetime; that that lease was entirely fictitious."

In support of our contention that the foregoing errors were committed by the court below, and that the decision of the court below should be reversed, we present the argument and citations which follow.

ARGUMENT.**POINT ONE.****The Demurrer of Appellants to the Cross-bill Should Have Been Sustained.**

The court will bear in mind that the original bill of appellants had for its object the distribution of the assets of two partnerships, which had probably been dissolved in law by the death of Paul Van Syckel before the time limited for their duration by the partnership agreements, but which had been admittedly dissolved by the expiration of said time limit before appellants' bill was filed; hence the question as to which event worked the dissolution becomes immaterial. In alleging what were the assets of the partnership P. Van Syckel & Company the bill set up that a part of those assets originally had been certain mortgages upon a plantation called "Santa Cruz;" that during the existence of the partnership these mortgages had been foreclosed and, as a result of such foreclosure, adjudged to said partnership in payment of the debt, whereby it had become the owner of the fee title to the same; but that at the time of such foreclosure said Paul Van Syckel had a recorded lease to 279 cuerdas of said plantation (that is, all of it except 35 cuerdas) which was subsequent in date to said mortgages, but which by agreement made at the time of the formation of said partnership was to be given priority over them; that said agreement was subsequently, on July 27, 1901, evidenced by a solemn notarial document, which was made Exhibit "E" to the bill (page 17 of the printed record); and that the decree of adjudication recognized the priority of this lease. The complainants simply asked that this instrument be taken and considered for what it purported to be upon its face in determining the assets of the partnership for division.

Although defendants in their answer to the bill *denied none of the foregoing averments*, they filed a cross-bill which alleged that this notarial document of July 27, 1901 (which is sometimes called in the record the "Agreement of Postponement of Right") had been executed upon the advice of counsel in order that it might have certain effects in litigation which was anticipated with Montilla, the original owner of the plantation referred to, and that it never had had, nor was intended to have, any force or effect between the parties thereto. It was, therefore, prayed that it might be declared void and of no force or effect and be canceled in the Registry of Property.

We ask the attention of the court to some of the specific allegations of this cross-bill, to wit (page 29) :

"Upon the advice of the said attorney it was
 " agreed by and between the said P. Van Syckel and
 " Company and the said Paul Van Syckel personally
 " that to provide against the contingency of the pay-
 " ment of the said mortgage by the mortgagor Mon-
 " tilla, or of the annulment of the transfer thereof
 " from Marxuach to the said Paul Van Syckel, ef-
 " forts should be made to establish the existence of
 " the said lease, so that in the event that the said firm
 " of P. Van Syckel & Company should not be able
 " to foreclose the said Montilla mortgage, and thus
 " acquire the dominion title to said Hacienda 'Santa
 " Cruz,' it would be in a position to continue in the
 " use and possession of the said hacienda by virtue
 " of the lease aforesaid.

"Acting upon this advice of the said attorney, and
 " for such reason only, the said Paul Van Syckel and
 " the firm of P. Van Syckel and Company entered
 " into the agreement of the twenty-seventh of July,
 " 1901, before the Notary Santiago R. Palmer, in
 " the city of San Juan, being Exhibit 'E' attached
 " to the bill of complaint."

At this point we are moved by curiosity to ask: How could this agreement possibly have the effect suggested? If

Montilla had *paid off* the mortgages their lien would have been extinguished, the rights of Van Syckel under the lease would have remained unaffected, and, if he had agreed to assign the lease to the partnership, that could be done. If, on the other hand, Montilla had by suit succeeded in annulling the transfer of the mortgages from Marxuach to Van Syckel, any agreement which Van Syckel, or his assignees, P. Van Syckel & Company, might have made affecting the lien of those mortgages while claiming to be owners of them would be as null as the transfer upon which their claim was founded—and the conspirators (if they were such) would find themselves exactly where they were before any such postponement of right had been executed.

Then the acute pleader concludes:

"So that, in the event that the said firm of P. Van Syckel & Company should not be able to foreclose the said Montilla mortgage, * * * it would be in a position to continue in the use and possession of said hacienda by virtue of the lease."

But would it? If in any manner Montilla could have obtained a decision or decree that the assignment of said mortgages to P. Van Syckel & Company, and hence the latter's claims under them, were a nullity, by the same decision or decree the nullity of their attempt to postpone (that is, to subordinate) the lien thereof to that of the lease would have followed as a necessary incident and result, and the priority of the mortgages would have been restored.

But let us read further from the same paragraph of the cross bill:

"It was agreed and understood, however, at the time between the said Paul Van Syckel and the said firm of P. Van Syckel & Company that this agreement should in no way as between the said parties affect the unrestricted and unlimited rights which the said P. Van Syckel & Company should, or might, be entitled to in and to the said Hacienda

" 'Santa Cruz' by virtue of the assignment to the said firm of the said mortgage and of the subsequent foreclosure thereof, as was intended and contemplated by the said Paul Van Syckel and the said 'P. Van Syckel & Company.'"

In other words, notwithstanding the execution of this solemn public instrument, the parties thereto should stand to each other in exactly the same relation as they had stood before its execution. In further affirmation of this, we find the following in paragraph IV (page 30):

"Defendants further say that notwithstanding the acquisition by P. Van Syckel & Company absolutely of the said Hacienda 'Santa Cruz,' as aforesaid, the said firm, by agreement with the said Paul Van Syckel and upon the advice of their said attorney, found it necessary, or advisable, apparently to recognize the supposed existence of the said lease, but defendants say that this was done upon the advice of counsel, as above stated, for the purpose of successfully defending the action which was instituted by the said Emilio Montilla against P. Van Syckel & Company and José E. Marxuach on the fifth day of December, 1902, in the District Court of San Juan, for the purpose of annulling the transfer of the said mortgage to Van Syckel, and subsequently by him to P. Van Syckel & Company, to annul the formation of the articles of partnership of P. Van Syckel and Company in so far as related to the contribution by the said Paul Van Syckel to P. Van Syckel & Company of the said mortgage, etc. * * *

"It was agreed and understood between Paul Van Syckel and the said firm of P. Van Syckel and Company that the latter would avail itself of the said lease and that the same should be recognized in existence by either of the said parties only in the event that the said suit of Montilla should be successful and in the event that P. Van Syckel & Company should be deprived of the dominion ownership of the Hacienda 'Santa Cruz,' which it had acquired by virtue of the said foreclosure proceedings."

That is, the "supposed existence of the said lease" was to be recognized for the sole purpose of deceiving other interested persons and the courts of justice. This is made even plainer by the allegations of paragraph VII, to wit (page 32):

"Defendants say that while it is true that in the
 " said articles of association of the Santa Cruz Sugar
 " Company it was provided that the said Santa Cruz
 " Sugar Company should pay the sum of one hun-
 " dred seventy-five dollars (\$175.00) monthly rental
 " to the person or corporation who should be entitled
 " thereto, defendants say that this clause was placed
 " in the said agreement for the reasons hereinbefore
 " expressed, and because of the fact that the said
 " firm of P. Van Syckel & Company expected that the
 " said Emilio Montilla y Valdespino would appeal
 " from the judgment of the Supreme Court of Porto
 " Rico rendered on the seventeenth day of March,
 " 1905, and because it was the purpose and under-
 " standing of Paul Van Syckel and of P. Van Syckel
 " & Company to *preserve the fiction of the said lease*
 " until such time as the said judgment or decree of
 " the Supreme Court aforesaid should become final
 " and effective." (Italics ours.)

We, therefore, think it may be fairly said that the appellees, complainants in the cross-bill, were thereby asking the court to grant them relief from the effects of an instrument which was by themselves alleged to be fictitious and fraudulent in its inception and executed solely for the purpose of deceiving others interested in the property, and especially the courts of justice.

The demurrer of appellants to this cross-bill (page 49) was upon three grounds, which may be stated as two: (a) that complainants in the cross-bill did not thereby show themselves entitled to equitable relief of any kind, and (b) that said cross-bill showed upon its face that they did not come into the court of equity with clean hands because of the admissions above quoted.

(a) Cross-bill Showed No Right to Equitable Relief.

In considering this ground of demurrer, we submit that the court below was not only at liberty but was under the obligation to consider not only the averments of the cross-bill itself, but also the contents of the exhibits filed therewith or referred to therein and the effect of the decisions of the Supreme Court of Porto Rico, which were by reference made a part of paragraphs II and VII and alleged to support the contentions of appellees, at least in so far as such matters appeared from the exhibits and the published report of the latter decision of which the court might take judicial notice. Let us now examine the cross-bill in connection with its exhibits and this decision.

(1) In paragraph I (page 28) it is alleged that:

"Upon the assignment and transfer of the said
 " mortgage from the said Van Syckel to the firm of
 " P. Van Syckel & Company it was intended by him
 " and understood between him and defendants So-
 " brinos de Ezquiaga, and such was the basis and
 " consideration of the articles of partnership above
 " referred to, that the said firm of P. Van Syckel &
 " Company should acquire all of the rights and title
 " of every kind and character, whether as mortgagee
 " or lessee, which the said Van Syckel had, or might
 " have, in and to the said Hacienda 'Santa Cruz.' "

Yet the articles of partnership themselves, which were in the form of a notarial document and were attached to the same cross-bill as Exhibit No. 1 (page 33) expressly state and show that all that Van Syckel assigned or pretended to assign to the partnership respecting "Santa Cruz" were the mortgage credits, amounting with interest to the sum of 11,697.65 *pesos*, of which the history, and even the book and page of their registry, are specified (page 34).

(2) The remainder of said paragraph I is devoted to allegations as to the intentions and oral agreements of the parties with respect to this instrument of "postponement of

right," which was executed on July 27, 1901. Yet the law of evidence then, and now, in force in Porto Rico (Acts of the Legislative Assembly of Porto Rico, 1905, page 73) contained the following provisions:

SECTION 25. When the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms, and therefore there can be between the parties and their representatives, or successors in interest, no evidence of the terms of the agreement other than the contents of the writing, except in the following cases:

1. Where a mistake or imperfection of the writing is put in issue by the pleadings;

2. Where the validity of the agreement is the fact in dispute.

But this section does not exclude other evidence of the circumstances under which the agreement was made or to which it relates, as defined in section 28, or to explain an extrinsic ambiguity, or to establish illegality or fraud. The term "agreement" includes deeds and wills, as well as contracts between parties.

SECTION 28. For the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject of the instrument, and of the parties to it, may also be shown so that the judge be placed in the position of those whose language he is to interpret.

SECTION 101. The following presumptions, and no others, are deemed conclusive: * * * 2. The truth of the facts recited, from the recital in a written instrument between the parties thereto, or their successors in interest by a subsequent title; but this rule does not apply to the recital of a consideration. * * *

Under the allegations referred to no question was made of a mistake or imperfection in the writing, nor of the validity of such an agreement as they had made; nor was their purpose confined to an explanation of the circumstances of the parties, or of the situation of the subject, or of any ambiguity; nor was any illegality or fraud alleged

except their own joint intent to deceive others. On the contrary, their voluntary execution of the instrument with knowledge of its consequences was averred, and the attempt was to aver and have the court act upon an alleged intention and oral agreement that the written contract should be without force or effect between the parties thereto. We submit that such allegations set forth matters which the law does not permit to be proven, and afford no ground for relief either at law or in equity.

(3) Paragraph II of the cross-bill referred to the suit brought by P. Van Syckel & Company to foreclose these mortgages which had been assigned to them by Van Syckel, and alleged that, as a result of that suit, "the said hacienda was awarded and adjudicated to the said P. Van Syckel & Company without any limitation or reservation whatsoever in favor of the said Paul Van Syckel or any other person" (page 30).

Yet the same paragraph referred to the judgment in that case and made it a part of the bill as Exhibit No. 2; and, upon turning to that exhibit, we find the following paragraphs therein (italics ours):

"It appearing by instrument executed on the
 " twenty-third day of June of eighteen hundred and
 " ninety-seven, before the notary Don Mauricio
 " Guerra, Don Emilio Montilla *entered into a con-*
 " *tract of lease* with Don Pablo Van Syckel y Paul
 " of the plantation 'Santa Cruz' deducting therefrom
 " thirty-five cuerdas which he had previously leased
 " to Don Rafael Gutierrez del Arroyo, *by virtue of*
 " *which contract the said Van Syckel received the*
 " *said property as lessee*, binding himself to pay as
 " rent therefor the amount of two hundred and five
 " pesos, provincial money; it being one of the con-
 " ditions of that stipulation that, there being no
 " time fixed for the expiration of said contract, the
 " same shall endure and *the owner would be bound*
 " *to respect the same so long as the lessee should*
 " *comply with the payment of the monthly rent,*
 " and said instrument was recorded, as to two hun-

"dred and seventy-nine cuerdas of the property
 "leased, at folio two hundred and fifty-nine, over,
 "of volume eleventh of Bayamón, property number
 "seventy-nine, registration fourteenth;" * * *
 (page 41).

"It appearing that by another instrument executed
 "on the twenty-seventh day of July of the current
 "year the firm of P. Van Syckel and Compañia, as
 "mortgage creditor, and Don Pablo Van Syckel y
 "Paul, as lessee of the property 'Santa Cruz,' *entered*
 "*into an agreement under which any and all rights*
 "*of prelation of the three mortgage credits* repre-
 "sented by the former, on account of their dates,
 "*were thereby postponed to the real right of lease*
 "which the other party Van Syckel has in his favor,
 "*the former having made express waiver of such*
 "*rights as it may have to ask for a rescission of the*
 "*contract of lease*, which said agreement was re-
 "corded at folio two hundred and thirty-seven, over,
 "of said volume eleventh, registration eighteenth;"
 * * * (page 42).

The said judgment then proceeded to enumerate the different recorded liens existing against said plantation, and, after the description of several not material here, continued as follows:

"By the mortgage credits for eleven thousand
 "Mexican pesos in favor of the first claimant, hav-
 "ing, in addition, as later liens, a cautionary notice
 "of the suit brought by Doña Dolores Gutierrez del
 "Arroyo against the defendant in a declaratory ac-
 "tion for performance of a contract and execution
 "of a mortgage instrument, set forth in entry 'B'
 "and at folio fifty-seven, over, of volume nineteen
 "of Bayamón, and

"By a real right of lease constituted in favor of
 "Don Rafael Gutierrez del Arroyo on thirty-five
 "cuerdas of the property hereinabove described,
 "stated in registration sixteenth of the same" (page
 43).

The description of the three mortgages which aggregated the 11,000 pesos found at the beginning of said judgment (page 40) recites that the record of the same constituted, respectively, the ninth, tenth, and eleventh registrations referring to said plantation in the Registry of Property, and the paragraphs which have been quoted show that the lease to Van Syckel was the fourteenth registration, and the lease to Gutierrez del Arroyo was the sixteenth. Hence it is seen that the lease to the latter was subject to be extinguished by the sale under the mortgages, as would have been the lease to Van Syckel but for the agreement of July 27, 1901.

The same Exhibit No. 2 further showed (page 44) that, subsequent to the original judgment from which the above quotations have been made, the attorney for P. Van Syckel & Company filed a petition asking the court to issue a copy of that judgment, translated as "the writ of adjudication," and also of a supplemental order which he asked for, in order that the proper entries might be made in the Registry of Property. This petition was granted, the part of the order here material being as follows:

"Let notice be served upon Mr. Paul Van Syckel
 " or on his legal representative Don José B. Arsuaga
 " of the adjudication of the property made in favor
 " of P. Van Syckel & Company *for the purpose of*
 " *the contract of lease* entered into by the former
 " with the debtor Montilla, and let the firm of P.
 " Van Syckel and Company be put in possession of
 " the thirty-five cuerdas of land belonging to the
 " said plantation and which appear as possessed by
 " Don Rafael Gutierrez del Arroyo as lessee thereof,
 " with notice of such possession to the said Gutierrez
 " del Arroyo" (page 45).

In view of this language, there is no escaping the conclusion that by this judgment the document of "Postponement of Right" was not only recognized but enforced; that Van Syckel was left in possession under his lease, being notified of the adjudication so as to be advised to whom the rent

should be paid; and that Gutierrez del Arroyo was foreclosed of his rights and ordered to turn the possession of his thirty-five cuerdas over to P. Van Syckel & Company. Why this result followed with respect to Gutierrez, and would have followed with respect to Van Syckel save for the document aforesaid, is seen from the provisions of the Civil Code of 1889, then in force in Porto Rico, of which one section reads as follows:

"Art. 1571. The purchaser of a leased estate has a
 "right to terminate the lease in force at the time of
 "making the sale, unless the contrary is stipulated,
 "and the provisions of the mortgage law."

Section 1474 of the Civil Code of 1902, in force at the time of the foreclosure and adjudication, has an identical provision.

We think we have made plain that this exhibit emphatically disproved the allegation of the cross-bill itself above quoted, that the plantation had been adjudicated to the partnership "without any limitation or reservation whatsoever in favor of the said Paul Van Syckel," and showed affirmatively that such a *reservation had been made*.

(4) The same exhibit also contradicted the allegations of paragraph III of the cross-bill (page 30) in case its allegations are to be taken in the sense that the phrases "taking of the title to the said property absolutely" and "to become the absolute owner of said property" mean free from the rights of Van Syckel under his lease.

(5) Paragraph IV of the cross-bill (page 30) admits the subsequent recognition of the lease by P. Van Syckel & Company, but alleges that it was a simulated recognition for the purpose of defending against Montilla; while the first part of paragraph V (page 31) alleges that Van Syckel never made any claim under the document of "Postponement of Right" after it was executed, nor did he pay any rent to P. Van Syckel & Company. But as he was admittedly the owner of a half interest in that firm, and there is

no allegation that any liquidation of accounts or profits was made, surely such allegations are not sufficient to overcome a solemn instrument.

(6) Paragraph VI of the cross-bill alleged the admitted fact that the firm of P. Van Syckel & Company, after the foreclosure of the mortgages and the adjudication of the plantation to them, extended its copartnership for a further term of four years under amended articles which conformed to the change in the character of that part of its assets from a mortgage right to the ownership of the property itself. The only further allegation is that "no reference is made in such extension of the articles of partnership of May 26, 1902, to any claim or lease by Paul Van Syckel as against the Hacienda 'Santa Cruz.'" This can hardly be convincing, or even important, when it is remembered that neither was any such mention made in the first articles, although the leasehold right is admitted to have existed up to that time.

Taking this allegation in connection with the allegation of paragraph I, that Van Syckel transferred to the firm when first formed his rights of lease as well as his mortgage rights, although the former were not mentioned, we have this remarkable contention: The leasehold rights *were included* in the first partnership, *although* they were not *mentioned*; those rights *did not exist* at the time of the second partnership *because* they were *not mentioned*. It is not upon such inconsistent propositions that equity should grant relief.

(7) Paragraph VII of the cross-bill merely admits an allegation of the original bill that the articles of the Santa Cruz Sugar Company simply provided for the payment of its rental to "the person or corporation who should be entitled thereto," without specifying who that person or corporation might be, and tries to avoid the suggested conclusion therefrom by repeating the story of attempted protection in pending litigation and "to preserve the fiction of the said lease."

We have now reviewed each paragraph of the cross-bill

much waste paper. As we understand it, courts will not hear parties so stultify themselves.

Waldon *vs.* Skinner, 101 U. S., 577, 584;

Brown *vs.* Slee, 103 U. S., 828, 838;

Assurance Company *vs.* Building Association, 183 U. S., 308, 318;

Simpson *vs.* U. S., 198 U. S., 397, 398.

The above cited case of Brown *vs.* Slee was one quite similar to the case at bar, with the variation that the contract in controversy had been made by the surviving partner of a partnership with the executors of the deceased partner instead of with that partner himself. The surviving partner, by cross-bill in the suit which the executors had brought to compel performance of the contract, set up a verbal understanding contemporaneous with and contrary to the written terms. This court said:

"The averments of Brown as to the obligations of the estate are contradicted by the terms of the written instrument to which he refers, and on which the rights of the parties depend. There is no allegation of fraud or mistake in reducing the contract to writing. It follows that the demurrer to the cross-bill was properly sustained."

We have already cited the Law of Evidence in Porto Rico applicable to present circumstances (*ante*, pages 21-22). The doctrine of estoppel is also applicable. The general rule has been clearly stated for this court by Mr. Justice Brown:

"It may be laid down as a general proposition
 " that where a party assumes a certain position in
 " a legal proceeding and succeeds in maintaining
 " that position, he may not thereafter, simply be-
 " cause his interests have changed, assume a con-
 " trary position, especially if it be to the prejudice
 " of the party who has acquiesced in the position
 " formerly taken by him."

Davis *vs.* Wakelee, 156 U. S., 680, 689.

and have shown the contradiction between some of them and the exhibits attached thereto, and the legal futility of others, even were the allegations true in fact. The net result is, we submit, an attempt to contradict and destroy a solemn written instrument by an alleged contemporary oral understanding. To substantiate this understanding a certain motive is stated, and certain facts are alleged to be apparent from records, which records are also made part of the pleading. If the foregoing analysis has shown that the motive as alleged would have been a vain one, by no possibility affecting the rights of Van Syckel and P. Van Syckel & Company as against Montilla or third parties, and that the contents of the exhibits themselves disprove the understanding alleged, it logically follows that the document of "Postponement of Right" was not a fiction, but made for the very purpose appearing on its face—its effect on the rights of the parties as between themselves, and that the claim of its being a fiction has had its origin since the death of Paul Van Syckel removed one of the principal actors from the scene.

Another reason why the court below should have sustained the first and second grounds of demurrer to this cross-bill is that, even conceding all the allegations of the bill to be true as made, without reference to the exhibits or court decisions, those allegations would not warrant the court in declaring the agreement of July 27, 1901, to be void or not binding on the parties. As we understand the principles of equity, it will never relieve parties from the consequences of their contracts unless they have been induced to enter into such contracts by fraud, deception, accident or mistake. Nothing resembling either of these things is alleged in this cross-bill; on the contrary, it is averred and insisted that both parties to the contract knew just what they were doing and the exact purpose to be accomplished; that that purpose affected only third persons, and as between the parties themselves it was to be simply as so

Here the case made is that the parties had taken their position, executed this contract, placed it upon record, used it before the courts, and in every way represented to the world that it was a valid, subsisting instrument. We submit that neither of them could subsequently, "simply because his interests have changed," aver that it had never been valid at all.

The principle underlying our law of estoppel is also broadly recognized in the system of law governing Porto Rico—in fact, it is one of the maxims of the Spanish law. It has been described by the Supreme Court of Porto Rico as "the moral and juridical principle that no one can deny his own acts" (*nadie puede ir contra su propios actos*).

Fernandez *vs.* Gutierrez del Arroyo, 3 Castro, Dec. de P. R., 37, 42; 10 P. R. Rep., 59, 69.

Let it also be remembered that the case here attempted to be made is not the *subsequent modification* by parol of an existing valid contract, either as to the partnership articles or as to the postponement of its mortgage right by that partnership. The allegation of paragraph I of the cross-bill is clear and positive, referring to the assignment of Van Syckel's leasehold right to the partnership, that: "*Upon the assignment and transfer of the said mortgage*" (which was effected by the signing of the articles) "it was intended by him and understood between him and defendants * * * that the said firm * * * should acquire all of the rights and title of every kind and character, whether as mortgagee or lessee, which the said Van Syckel had," etc.

And with reference to the document of "Postponement of Right" the allegation is equally clear. It is stated that the idea of that document was conceived in the mind of their legal counsel, that "acting upon this advice and for such reason only" the parties "*entered into the agreement of the twenty-seventh of July, 1901,*" and that "it was agreed and understood however *at the time between*" the parties "that

this agreement should in no way as between the said parties affect," etc.

In the case of each document, then, it is attempted to set up a contemporary verbal agreement vitally modifying—in the case of the document of July 27, 1901, even annulling—the solemn writing. We had supposed it to be elementary that such allegations could not be a basis for such action, unless it were averred that such contemporary matter would show fraud or mistake in securing complainant's signature to the written document.

It seems hardly necessary to cite authorities, but the law covering the point has been so clearly stated in one decision of this court involving identical circumstances, so far as affects the present contention, that we cannot refrain from quoting:

"The position of plaintiff in error is in the first place, that the evidence on his behalf tended to show an agreement between himself and defendant in error, entered into prior to, or contemporaneously with, the written contract, independent of the latter and collateral with it, that the machine purchased should have a certain capacity and should be capable of doing certain work; that the machine failed to come up to the requirements of such independent parol contract; that this evidence was competent; and that the case should therefore have been left to the jury."

"Undoubtedly the existence of a separate oral agreement as to any matter on which a written contract is silent, and which is not inconsistent with its terms, may be proven by parol, if under the circumstances of the particular case it may properly be inferred that the parties did not intend the written paper to be a complete and final statement of the whole of the transaction between them. But such an agreement must not only be collateral, but must relate to a subject distinct from that to which the written contract applies; that is, it must not be so closely connected with the principal transaction as to form part and parcel of it. And when the writ-

"ing itself upon its face is couched in such terms as
 "import a complete legal obligation, without any un-
 "certainty as to the object or extent of the engage-
 "ment, it is conclusively presumed that the whole
 "engagement of the parties, and the extent and
 "manner of their undertaking, was reduced to writ-
 "ing.

"There is no pretense here of any fraud, accident
 "or mistake. The written contract was in all re-
 "spects unambiguous and definite. * * *

"We are clear that evidence tending to show the
 "alleged independent collateral contract was inad-
 "missible."

Seitz vs. Brewers', etc., Co., 141 U. S., 510.

It has not escaped our attention that the case quoted from
 was a case at law, nor that the court was discussing the effect
 of evidence rather than of pleading; but we believe the rule
 to be the same in equity as at law, unless the basis of equi-
 table jurisdiction is a claim of fraud, accident, or mistake
 vitiating the contract—which is wholly absent in the case
 at bar, as in that cited—and we believe that a pleading can-
 not be good where its allegations show that it can be sup-
 ported only by evidence which is inadmissible.

The prayer of the cross-bill was to declare the contract of
 "Postponement of Right" void and decree its cancellation.
 In this view, the holding of this court in a case in which the
 bill was filed to cancel a deed of release of an interest in the
 capital stock of a defendant corporation is pertinent, and Mr.
 Justice Strong, delivering the opinion, said:

"It is obvious, at first sight, that most of the alle-
 "gations of the bill have little, if any, relevancy to
 "that subject. At most, they are matters of induce-
 "ment, introductory to the one important averment
 "upon which alone the bill can rest. That averment
 "is, in substance, that untrue and incorrect state-
 "ments of the condition and affairs of the company
 "were exhibited to the complainant's assignee, with
 "intent to deceive him; statements by which he was
 "deceived and induced to consent to the settlement

" that was made, and to execute the release of the
 " stock. Unless this allegation has been sustained by
 " proof, the complainant's suit must fail.

" Canceling an executed contract is an exertion of
 " the most extraordinary power of a court of equity.
 " The power ought not to be exercised except in a
 " clear case, and never for an alleged fraud, unless
 " the fraud be made clearly to appear; never for al-
 " leged false representations, unless their falsity is
 " certainly proved, and unless the complainant has
 " been deceived and injured by them."

Atlantic Delaine Co. vs. James, 94 U. S., 207.

Where, therefore, as in the case at bar, the allegations upon which such a prayer is based make no showing of fraud, accident or mistake underlying the execution of the contract *imposed by one party upon the other*, but plainly aver that both parties entered into it with full knowledge and *for the sole purpose of deceiving others*, no case is made for the intervention of a court of equity to cancel the contract *as between the parties* or their privies.

(b) *Cross-bill Showed Complainants Therein Did Not Come into Court with Clean Hands.*

Thus far we have discussed the sufficiency of the cross-bill upon the assumption that its allegations involved no question of illegality or moral turpitude in the oral agreement alleged. But the third ground of the demurrer raised that question, and we now submit that, if its allegations of fact were true, the cross-bill showed a course of action so conceived in iniquity and executed in fraud and imposition upon others that a court of equity should scorn to lend its aid to the wrongdoer.

It is unnecessary to quote again those parts of the cross-bill which explain the alleged purpose of executing the agreement of July 27, 1901, called the document of "Postponement of Right," which it is the main purpose of the cross-bill to have canceled; reference need only be made to

pages 16-19, *ante*, where such quotations appear. The substance of these allegations, as we conceive it, was that this document was a pure fiction as between the parties, and had been conceived, drawn up and executed in order that Montilla, believing it to be real, might be influenced in the course he should elect to pursue in his threatened suit to have all the transfers by which Van Syckel or P. Van Syckel & Company had obtained possession and title to this plantation, "Santa Cruz," set aside, and that in case such suit was finally brought this superiority of the lease over the mortgages might be used in some unexplained way to the advantage of said parties. Whether the first part of the alleged plan was effective probably Montilla only can tell, but that the use proposed was actually made of the document, so that, in case it was merely a fiction, the courts of justice were deceived and induced to consider it genuine, is shown by the recitals of the court judgment which was made a part of the cross-bill as Exhibit No. 2 (page 42), as well as by the supplemental judgment in the same suit (page 45), whereby Van Syckel was left in possession of his 279 cuerdas of land under his lease after the foreclosure.

The court below had before it, and we think had a right to take judicial knowledge of, the decision and opinion of the Supreme Court of Porto Rico upon appeal by Montilla of the case which he had brought against these parties, which is referred to in paragraph VII of the cross-bill. From this decision it appeared that as late as 1905 appellees were still maintaining the continued existence and validity of the Van Syckel lease, although according to the contention of the cross-bill there had been upon the foreclosure and adjudication of the plantation to P. Van Syckel & Company in November, 1901, "a merger or confusion of rights, by reason of which the said lease no longer exists."

Montilla *vs.* Van Syckel, 2 Castro, Decisiones de P. R., 281, 295-8; 8 P. R. Rep., 153.

The question, then, is, in view of such allegations and other matters properly before the court, Was the court warranted in retaining the cross-bill as sufficient and requiring appellants to answer it? In other words, could those complainants in the cross-bill come into the court of equity and be allowed to say that what they had been theretofore maintaining and asking the courts of the country to uphold as valid *as against others* was a pure fiction and had never had any existence as between the parties to it, and to secure its cancellation? A court of equity will not aid them to that end, but will leave them where it finds them, if we understand the decisions.

The leading early case in which the necessity of coming into a court of equity for affirmative relief with clean hands is often called the Sims case, wherein one Creath had attempted to enjoin the enforcement of a judgment on the ground that the transaction back of the proceeding was an illegal one; but it appeared that Creath had been a party thereto, and, discussing that aspect of the case, Justice Daniel used language that has since been often quoted, saying that it expressed "principles of equity jurisdiction which may be affirmed to be without exception":

"Whoever would seek admission into a court of equity must come with clean hands, and such a court will never interfere in opposition to conscience or good faith. The effect of these principles upon the statements of the complainant is obvious upon the slightest consideration. The complainant alleges that the obligation to which he had voluntarily become a party was intentionally made in fraud of the law, and for this reason he prays to be relieved from its fulfillment. This prayer, too, is addressed to a court of conscience; to a court which touches nothing which is impure. The confident and appropriate answer from such a tribunal to such a prayer is this: that however unworthy may have been the conduct of your opponent, you are confessed *in pari delicto*; you cannot be permitted here to plead your own demerits; precisely,

"therefore, in the position in which you have placed
 "yourself, in that position we must leave you."

Creath's Admir *vs.* Sims, 5 How., 192, 204.

In a subsequent case, very similar in its facts, the above quotation was repeated by the same justice, who further there said:

"He certainly possessed, at some period of time,
 "knowledge of the character of that transaction; and
 "if his knowledge reached back to its origin and
 "purposes, or to the date of his own participation
 "therein, he must be viewed as standing *in pari*
 "*delicto* with all similar actors therein—a position
 "which, however, it might shield him against at-
 "tempts from associates in wrong, so far as these
 "could be urged through the instrumentality of
 "courts of justice, can invest him *with no rights,*
 "*either at law or in equity, as against advantages ac-*
 "*quired by his confederates.*" (Italics ours.)

Sample *vs.* Barnes, 14 How., 70, 73.

In another case in this court a bill in equity had been filed to enforce an oral agreement to the effect that one who had obtained a decree under a foreclosure of mortgage should, if an immediate sale under the decree was permitted to take place, bid in the land at a nominal price and hold it in trust for the defendant in that suit, one of the complainants in the new bill, until she could pay the amount of the decree in installments. As a reason for making this oral agreement it was alleged that the delay in the sale would permit other parties fraudulently to obtain possession of a part of the land. It was then charged that the complainant in the foreclosure, having bid in the property under the alleged agreement, was ignoring that agreement and claiming to hold the property as his own; hence the prayer was that the court compel compliance with the oral agreement, or a new sale of the land for the payment of the mortgage debt. This seems to us a situation much less objectionable than that alleged by the cross-bill in the case at bar, yet this court said:

"These allegations, stripped of their indefiniteness and vagueness, mean simply this: that the parties to this bill, in order to counteract a claim set up by other parties to a portion of the mortgaged lands, combined together, through the aid of the court, to shorten the time of sale, and to cover up the real ownership of the property.

"A fraudulent agreement was entered into to defeat, as is charged, 'a fraud attempted against the complainants.' If the claim set up was a fraud on the rights of the complainants, does that consideration change the character of the agreement which was made to defeat that fraud? Manifestly not. The whole complaint of the bill is that the defendant will not execute the agreement thus fraudulently made, and the object of the bill is to compel him to do it.

"A court of equity will not intervene to give relief to either party from the consequences of such an agreement. The maxim '*in pari delicto potior est conditio defendentis*' must prevail. It is against the policy of the law to enable either party, in controversies between themselves, to enforce an agreement in fraud of the law, or which was made to injure another." (Italics ours.)

Randall vs. Howard, 2 Black, 585.

If the agreement in that case was *fraudulent*, the agreement alleged by the cross-bill to have existed between Van Syckel and the firm of P. Van Syckel & Company was also fraudulent. The same purpose to deceive the court, to cover up the real ownership of property, and "to injure another," to wit, Montilla, caused its conception. Whether or not it was well conceived to accomplish these purposes, or whether the claims of Montilla, which were to be thus outwitted, were valid or invalid, cannot, according to the law above laid down, "change the character of the agreement." It is to be judged by the *motive behind it*, not by the result.

Another case analogous in principle is that spoken of in the decision itself as "The Warehouse Case," in which this court found that the parties had combined to acquire the

property of an insolvent debtor in such manner as to shut out the other creditors. One of the conspirators afterwards deserted the combination and went in to accomplish on his own account, and did accomplish, the object the combination had in view. Another of the conspirators then sued for the share he would have been entitled to had the combination remained intact. This court comments as follows:

"The court was imposed upon, and a combination formed, the object and direct tendency of which was to secure the title to the valuable real estate of an insolvent debtor, at the expense and sacrifice of his creditors. A proceeding like this is against good conscience and good morals, and cannot receive the sanction of a court of equity. The principle is too plain to need a citation of authorities to confirm it. It is against the policy of the law to help either party in such controversies."

Wheeler vs. Sage, 1 Wall., 518.

See also, *Scholey vs. Rew*, 23 Wall., 331.

There is also a line of cases, too numerous to need citation, where failing debtors have, for the purpose of keeping their property out of the grasp of their creditors, conveyed it to some one to hold on a secret trust—and then that some one, like the defendant in the *Randall* case, *supra*, has yielded to the temptation to keep it as his own, and the debtor has sued to enforce the secret trust. This and other courts have, of course, uniformly held that equity will not interfere to adjust rights under such conveyances as between the parties thereto. *Creditors* may maintain suits to set them aside and subject the property conveyed to *their* debts, but if the grantee denies the claim of the grantor the courts will not assist the latter, but leave him to the consequences of his fraudulent device.

Wolf vs. Styx, 99 U. S., 7.

Ballard vs. Searles, 130 U. S., 55.

Dent vs. Ferguson, 132 U. S., 50, 66.

So, here, if the agreement of "postponement of right" was a fictitious and fraudulent device for the purpose of concealing the title of "Santa Cruz" and keeping it out of the hands of Montilla, equity will relieve neither party from its consequences, but, in settling any controversy *between them*, will regard the document as meaning what it purports upon its face to mean.

At this point it may be well to make clear the difference in the situation of the complainants in the original bill (appellants) and the complainants in this cross-bill (appellees), so far as the alleged fictitious or simulated character of the instrument of July 27, 1901, is concerned. In the first place, appellants have not alleged the existence of any fraudulent agreement, and are not asking the cancellation of any instrument. On the contrary, they strenuously contend that every act of Paul Van Syckel and of P. Van Syckel & Company, so far as his knowledge went, was straightforward and honest, and every instrument executed by them was genuine. They prayed for a distribution of the partnership assets, giving every agreement and instrument the force and meaning it bore upon its face. And *under the issue made by appellees' answer to the original bill no question was made of the meaning or validity of any instrument or agreement*. It was only by the filing of the cross-bill by the appellees that these astonishing allegations became a part of the controversy, and solely upon the strength of them appellees were asking affirmative relief in the way of the cancellation of this instrument.

Indeed, that was the reason why they were compelled to ask for the affirmative relief.

Hence, if the court had sustained our demurrer, as we believe we have shown it should have done, the cross-bill would have been eliminated and a decree would have been granted upon the original bill, answer, and proofs—without relief of any kind being asked inconsistent with the terms of written agreements or instruments. In fact, in that event the decree would have been similar to that al-

ready entered, except that the division of assets would have been subject to a continued right of lease in complainants of the 279 cuerdas of land, so long as they paid to the other party the half of the stipulated rent. We wish, thus, to make plain that the allegations of the cross-bill did not affect the right of appellants to obtain the relief asked by them; nor, indeed, have appellees taken any appeal from the other provisions of the decree below.

POINT TWO.

Lease of June 23, 1897, Still Valid and Subsisting.

This point covers the second and third assignments of error. The court below made nineteen findings of fact, and from said findings deduced six conclusions of law (pages 69-84), of which the two conclusions involved in said second and third assignments of error read as follows (page 84):

"1. That the contract of lease executed on the
" 23rd day of June, 1897, between Emilio Montilla
" and Paul Van Syckel is without legal force or
" effect and has ceased to exist.

"2. That the leasehold rights previously existing
" in said Paul Van Syckel were merged in the fee
" title to said farm 'Santa Cruz,' acquired by the
" firm of P. Van Syckel and Company by virtue of
" the adjudication to it in the foreclosure suit against
" Montilla, and as a result of their agreement, set
" forth in the findings of fact, executed between Paul
" Van Syckel and P. Van Syckel & Company."

The question here to be discussed is whether these conclusions were warranted by the findings of fact. The prior existence of the contract of lease is found in the finding numbered 11 (page 69), where a translation of the same is given. The original articles of partnership of P. Van Syckel & Company are contained verbatim in the finding numbered

VII (pages 71-5). From this finding the court can see that a detailed description of the assets contributed to said firm by Paul Van Syckel is given, and that in such description no mention or reference is made to the leasehold rights of Van Syckel under his contract of lease aforesaid. By the VIIIth finding of fact the terms of what is called the document of "postponement of right" are shown, and from the last clause (page 77) the covenant and agreement to subordinate the right of the firm under their mortgages to the recognized existing right of Van Syckel clearly appears. The Xth finding of fact (same page) contains a *verbatim* translation of the contract of extension of the partnership of P. Van Syckel and Company, from a perusal of which it will be seen that no reference is made to any change in the rights of the parties touching said plantation "Santa Cruz" except that the mortgage credits held under the original articles of partnership had been converted by the foreclosure suit into a title of ownership by adjudication. The last clause of said articles, however, may by inference be argued to contain a recognition of the continued force of the lease in accordance with the document of "postponement of right," because it says that the partnership shall continue its business and operations—

"under the same clauses and conditions as are stipulated in the instrument of organization therein referred to in paragraph I of the facts herein without making in any one of them any alteration that may modify the context thereof, and without any other explanation than that stated in paragraphs fifth, sixth, and seventh of this instrument."

By the XIth finding (page 79) the court finds that in November, 1902, the plantation "Santa Cruz" was leased to one Rosales for four years, and that for said lease two documents were made out, one of them being a sublease of the 279 cuerdas, executed by Paul Van Syckel as lessor; the other for the remaining 35 cuerdas, being executed by P. Van

Syckel & Company. In the same finding of fact appear the articles of partnership of the Santa Cruz Sugar Company, by the seventh article of which it was provided that the lessees should

" pay \$175.00 monthly as rent to the person or corporation which at any time shall appear to be the owner or lessee thereof."

By the XIIIth (page 82) finding it is stated that in the suit brought by Montilla against Van Syckel, P. Van Syckel & Company, and Marxuach, for the purpose of canceling and annulling all of the transfers which had deprived Montilla of his property, and also to have declared void said lease of June 23, 1897,—

" said Van Syckel and P. Van Syckel & Company
 " as parties to that suit defended the existence and
 " validity of that lease in accordance with the agreement between them, as hereinafter set forth, both
 " being represented by the same counsel, and obtained from the trial court a judgment sustaining
 " their contentions in all respects; that on September 24, 1903, Montilla took his appeal from that judgment to the Supreme Court of Porto Rico, where
 " the same contentions were again made by counsel for the respective parties; and that on March 11, 1905, said Supreme Court rendered its decision affirming the judgment of the lower court in all
 " respects and expressly holding after full discussion that said lease was a valid, recordable and subsisting contract."

So far it is clear that all of the facts found are entirely inconsistent with and in no way support the conclusions of law above quoted; but the court below proceeded to include as findings of fact certain statements which we believe are not properly findings of fact, but merely expressions of an opinion on the part of the court as a result of his view of the law applicable to the facts he had found (Houston & T. C. R.

Co. vs. Texas, 177 U. S., 66, 80), and from the oral testimony given by the lawyer Eduardo Acuña, which is shown in that part of the certificate of the judge below containing the rulings of the court upon the admission of his evidence (pages 85-88). For instance, the XIVth finding of fact reads as follows (page 83):

"The said Paul Van Syckel during his lifetime
 "agreed with Sobrinos de Ezquiaga by the terms of
 "his partnership in the firm of P. Van Syckel &
 "Company and otherwise that said firm of P. Van
 "Syckel & Company should be the sole and exclusive
 "owners of the said farm 'Santa Cruz,' free and clear
 "of any claims upon the part of said Paul Van
 "Syckel by reason of said lease of June 23, 1897; and
 "that said deed of postponement should be kept alive
 "and represented as binding between the parties for
 "a common purpose as between said Paul Van Syckel
 "and said Sobrinos de Ezquiaga, to wit, for the
 "protection of the title of said P. Van Syckel and
 "Company to said farm 'Santa Cruz'; but it was at
 "the same time understood and agreed between the
 "parties that it was not to be given force or effect
 "as between them nor as against the absolute title of
 "said P. Van Syckel and Company to said farm, in-
 "dependent and free from the lease aforesaid, should
 "the Montilla mortgage be thereafter foreclosed and
 "said P. Van Syckel & Company become purchasers
 "of the property."

The court first says that an agreement that P. Van Syckel & Company should be sole and exclusive owners of the farm "Santa Cruz,"

"free and clear of any claims upon the part of the
 "said Van Syckel by reason of said lease,"

is proven

"by the terms of his partnership in the firm of P.
 "Van Syckel & Company, and otherwise."

We have already seen from the previous findings of fact that no such thing appeared by the terms of the partnership, or by any other documentary evidence; hence it must have appeared, if at all, by oral testimony.

The court further says that it was agreed that the deed of postponement should be kept alive and represented as binding between the parties for the protection of the title of the partnership to the property, but that it was not to be given force or effect as between themselves. In other words, the court found exactly what the cross-bill had alleged. This was the equivalent of the court finding that the terms and conditions of the notarial documents (which are literally incorporated in the other findings of fact) could be contradicted by certain oral evidence which had been admitted in the cause. This conclusion is repeated in more general terms in the XVIIth finding of fact (page 84), wherein it is stated that the evidence was "clear, unequivocal and convincing" that the lease was to have no life or effect as between the parties after the date of the partnership, and that the same was merged in the fee at the time of the adjudication thereof to said partnership, if not before.

As we have already shown that the documentary evidence incorporated in the earlier findings is wholly inconsistent with these findings, the conclusion is unavoidable that the court considered and gave greater force to the oral testimony produced to support the allegations of the cross-bill than to the documents themselves. This conclusion is further made certain by the consideration that the cross-bill itself alleged the existence of no documents inconsistent with those above referred to, which were largely documents produced by appellees themselves, but rested upon the "understandings" between the parties.

The question, therefore, of what legal conclusion should properly be deduced from these various findings of fact taken together involves practically the same considerations already argued under point one, *ante*, that is to say, if the cross-bill

alleged an "understanding" unenforceable in equity, these findings prove simply the same understanding and did not warrant the granting of relief.

We wish, however, to call the attention of the court to one other consideration derived from the findings of fact which we think renders it impossible to support the conclusions of law referred to, and that is that the *thirteenth finding of fact* shows that as late as March 11, 1905, the Supreme Court of Porto Rico rendered a decision in favor of the contentions theretofore and up to that time made and sustained by P. Van Syckel & Company to the effect that the lease in question was at that time a valid and subsisting contract; that from that judgment Montilla started to take a further appeal to this court, but that in order to avoid any further question of the findings in said judgment of March 11, 1905, and that the matters determined by that judgment might remain as the undisputed facts and law of the controversy, P. Van Syckel & Company made or approved a compromise with Montilla involving the dismissal of his appeal to this court, that contract of compromise being signed as late as December 30, 1905, while from the twelfth finding of fact it appears that Paul Van Syckel had already died in Havana on the 27th day of December, 1905.

By this solemn acceptance of a court judgment, if not otherwise, we think appellees should be held bound.

But whether or not the court may determine that finding XIV contains matters inconsistent with the previous findings referred to, or that it is a finding of opinion rather than of fact, we submit that the same argument must prevail against it that we adduced against the cross-bill itself. The court finds as parts of one and the same agreement two things: First, that the firm should own Santa Cruz free and clear of any claims of Van Syckel; and, second, that the deed of postponement should be made and kept alive for a common purpose, to wit: the protection of the title of the firm to the plantation, while the same was to have in reality

no force or effect as between them nor as against the absolute title of the firm. Conceding, as they did, the prior validity of the lease, P. Van Syckel & Company could therefore only "own Santa Cruz free and clear of" it by virtue of the finding of the fictitious character of the agreement of postponement.

The purpose as found is therefore practically identical with the purpose as alleged in the cross-bill, and, as has been argued in the discussion of the legal effect of those allegations, we insist that that purpose was essentially fraudulent and boldly illegal, and that consequently such a finding could not serve as a valid basis for the legal conclusion which the court reached, but that the proper legal conclusion from such a finding must be that such an agreement was in law fraudulent, void and of no effect, and that *the contract which was the subject of it remained unaffected and in full force.*

Finally, even if we concede for the sake of argument that this agreement of postponement was in fact made for the purpose found by the court, and that that purpose, as also found by the court, was not fraudulent, still the conclusion of law reached was not correct in the absence of a further affirmative finding that said agreement was not only reduced to writing, but put in the form of a public instrument.

It was conceded, we say again, that the lease was valid at the time of its execution and would have been still subsisting but for this agreement. It must also be conceded that this lease was "a property right in real property," as it was both recordable and recorded. Therefore we submit that any contract modifying or extinguishing it could not be valid unless evidenced by a public instrument. The Civil Code of Porto Rico of 1902 provides, under the head of Contracts:

"SECTION 1247. The following must appear in a public instrument:

"1. Acts and contracts, the object of which is the

"creation, modification or extinction of property
 "rights in real property."

* * * * *

From all the foregoing considerations we think it clear that the conclusions of law referred to were not warranted by the findings of fact, and that said findings could properly lead to no other legal conclusion than that cross-complainants were estopped to deny the continued existence and binding force of the lease which the court below ordered canceled.

POINT THREE.

The Deed of Postponement of July 27, 1901, Should Not Have Been Canceled.

This point covers assignments of error numbered four, five, and six. In the discussion of this point the same findings of fact to which attention was called under the preceding point are material up to the quotation from the thirteenth finding. The finding specifically referring to the deed of postponement is that numbered XV, wherein the court says:

"The court finds that the deed or document of
 "July 27, 1901, executed between Paul Van Syckel
 "and the defendants P. Van Syckel and Company
 "was executed between the parties in accordance with
 "the understanding and common purpose above set
 "forth, in order that P. Van Syckel & Company
 "might protect itself against the claims of Montilla
 "in the event that he should be permitted by the
 "courts to set aside the mortgage foreclosure ex-
 "ecuted by him to Marxuach and subsequently trans-
 "ferred by the latter to P. Van Syckel & Company;
 "that it was the purpose of Paul Van Syckel and the
 "defendants Sobrinos de Ezquiaga to assert the lease
 "previously executed by Montilla to Paul Van Syckel
 "only in the event that Montilla should be entitled
 "to redeem the property."

It is sufficient to say in the argument under this point that this finding of fact shows that the understanding and common purpose referred to was a fraudulent one and one which a court of equity should not permit a party before it to take advantage of for the purpose of avoiding his obligation under, and obtaining the cancellation of, a written instrument. As said under the previous point, the legal considerations and authorities supporting our present contention were presented to the court above under subsection (b) of point one (pages 33-40). If we are right in this contention, it follows that the court was not warranted from said finding of fact in holding said deed of postponement was without legal force as between the parties, nor that the appellees were entitled to the relief prayed in their cross-bill for the cancellation of the said lease; but notwithstanding the court's belief that the existence of such an understanding and common purpose was proven, the court should have held that it was said understanding and common purpose that was fraudulent and of no effect rather than that such common purpose rendered void and of no effect a solemn, notarial agreement.

The court seems to have been conscious of difficulty in maintaining its conclusions, so it inserted the sixteenth finding to the effect that although such an agreement might be near the line of fraud, as the judge had admitted in his opinion (page 61, bottom), yet the evidence did not show "that any direct intentional deceit was actually practiced upon the courts, or, in the last analysis, that any fraud was thereby practiced upon said Montilla." But, as the cases hereinbefore cited show, the question does not turn upon the success of the conspirators in accomplishing their fraudulent purpose, but upon the *motive and intent* of their actions.

If a man's evil intentions fail of accomplishment in spite of his best efforts, none the less is he guilty of moral turpitude in harboring and attempting to execute them, and none the less will the courts refuse to consider him as coming to them with clean hands.

POINT FOUR.

Estoppel Against Appellants Not Warranted.

This point covers the seventh assignment of error. We are unable to conceive upon what the court based its idea of estoppel as applied to the complainants by virtue of anything contained in the findings of fact. The cross-bill attempted to establish a basis of estoppel by allegations of a course of conduct on the part of Van Syckel after the formation of P. Van Syckel & Company, it being alleged that he had never paid any rental to P. Van Syckel & Company under his lease, and that he had allowed P. Van Syckel & Company to lease the property included in Van Syckel's lease, and that accounts had been rendered by P. Van Syckel and Company to Van Syckel showing its absolute ownership of said plantation without any objection on his part—in short, that Van Syckel

“recognized and respected the absolute rights of P.
 “Van Syckel & Company as the sole and exclusive
 “owner of the said hacienda without any claim on his
 “part, either as lessee or otherwise.” (page 31)

but the findings of fact are wholly silent in this regard except that the XIth finding contradicts the allegation of the cross-bill so far as the question of making contracts of lease is concerned, and in the latter clause of the XIIth finding it is stated that although it was proven that the Santa Cruz Sugar Company charged themselves with the rental of one hundred and seventy-five dollars (\$175.00) per month, it did not satisfactorily appear to whom the same was paid.

If it was the idea of the court that an estoppel could be based upon the findings numbered XIV and XV, then the arguments we have made under the two previous points as to the effect of those two findings are applicable to that contention and show that it should not prevail.

POINT FIVE.**Testimony Objected to Not Admissible.**

This covers the eighth assignment of error. Objection to only two answers of a single witness is insisted upon, but the admission of those two answers was vital to the interests of appellants.

The court will bear in mind that the answer of appellees to the original bill simply admitted or denied certain of its allegations and contained no reference to any oral agreement at variance with the writings made a part of the bill; while the cross-bill, which was filed at the same time, set up these oral agreements and understandings which were alleged to have modified or vitiated those written contracts, and that in this cross-bill were also contained the allegations that these understandings (which included one that a notarial document then about to be executed should be effective only so far as it might affect the rights of others, but as between the parties should be as waste paper) were the result of advice given to both partners by a lawyer named Acuña. It is also to be borne in mind that one of the partners, Paul Van Syckel, died in 1905, and that this testimony of Acuña was given in 1908, while he was still the lawyer of appellees. This much is explained in the first part of the certificate of the judge (page 85). As soon as it developed that an attorney was about to disclose conversations with his client, not only without that client's consent, but after he was dead, the court took notice of the situation and a colloquy between the judge and counsel ensued which, with the other material proceedings leading up to the questions and answers which are the subject of the present assignment, is shown by the certificate as follows:

"THE COURT: Is this testimony to be in his interest—in Mr. Van Syckel's interest?"

"Mr. DEXTER: Against his interest.

"The COURT: An attorney, without his client's consent?

"Mr. DEXTER: I have prepared for that.

"The COURT: When you ask the question we will hear from you further. I know there is a well-known line drawn where it is not only proper for an attorney to testify, but he can be required to testify where it is of a certain character, but I didn't understand there could be any question of that kind here, because it is against his interest.

"Mr. DEXTER: But at that time it was for his interest.

"Mr. PETTINGILL: The question of interest, if your honor please, is a matter to be determined when the disclosure comes up."

Whereupon an argument ensued upon the question, and the court adjourned in order to have opportunity further to consider it. Upon resuming the hearing:

"The COURT: At the last hearing of this legal question now before this court, counsel for the complainants objected to Mr. Acuña being permitted to testify, on the ground that the testimony he was about to give was privileged between attorney and client, as he, Attorney Acuña, was the attorney for both the predecessor in interest of complainants and of these respondents at the time of the transactions he is about to testify to.

"Mr. PETTINGILL: And further objects on the ground that the making of the notarial instrument of July 27, 1901, postponing the mortgage right of Sobrinos de Ezquiaga to the leasehold rights of Paul Van Syckel is alleged by said Sobrinos de Ezquiaga to have been a simulated transaction, which, if true, was confessedly to deceive the courts of justice and to claim rights as against their opponent, Montilla, under that instrument as an existing contract which they are now asking this court to find did not then exist, but had been merged in the title of P. Van Syckel & Company.

"The Court: And now, at 2 p. m., on Saturday, the 18th day of April, 1908, the court having had said objections under advisement since the last adjournment, announces that the objection to the testimony of Mr. Acuña is overruled, but reserves the right during the admission of such testimony to scrutinize its nature and to modify this ruling if necessary; and as to the second objection, which virtually means that respondents in their cross-bill are not coming into court with clean hands, the court holds its ruling hereon in abeyance, as it cannot decide it at this time under the facts in connection therewith. It is well settled that when an attorney is employed by two persons to perform professional services jointly for them and the clients afterwards get into a dispute about it between themselves, communications made to the attorney at the time of the employment by either of them in the presence of the other are not privileged, and either of the parties in the subsequent litigation between themselves can even compel the attorney to testify without the consent of the other joint employer.

"Mr. PETTINGILL: To which ruling complainants, by their counsel, except."

"The court subsequently in its opinion overruled the second objection above made by complainants. Mr. Acuña was thereupon recalled to the witness stand, and further testified as follows, it being understood by counsel and the court that counsel for complainants be considered as objecting to, and excepting to, the ruling of the court adversely to him upon each of the questions to which the objections last above stated and ruled upon generally were applicable."

Acuña then proceeded to testify in substance that he represented P. Van Syckel & Company in the suits brought by them against Montilla; that in that whole matter he represented all parties interested, including Paul Van Syckel personally; that the object of his employment was to represent them in the mortgage foreclosure and in the series of suits begun by Montilla in consequence of that foreclosure; that

the foreclosure was begun in 1901 and ended in November of that year; and that Montilla's suit to annul the foreclosure sale was begun in the early months of 1902. Then the document of postponement of right was shown him, and he stated that he was the attorney of the parties to it at that time; and he advised the making of the document before the beginning of the foreclosure suit; that he discussed the matter of postponing the mortgage with Van Syckel, who made the deed of postponement in accordance with the advice of witness; that such postponement was the purport of the advice and of the instrument, and that what Van Syckel did was, in combination with Messrs. Ezquiaga, to carry out the lease and postpone the mortgage to it—"that is, alternating the relative situation of the two liens."

Then, in answer to a question of counsel for appellees, the witness stated that he remembered what caused the postponement of the mortgage; whereupon he was asked the questions quoted in the assignment of errors, the full language of the certificate in that respect being as follows:

"Q. Now, Mr. Acuña, after you had given certain advice about the method of defending by both Paul Van Syckel personally and P. Van Syckel & Company against Montilla, what did Mr. Van Syckel do or say with respect thereto?

"A. He followed absolutely my advice and the lease of the Santa Cruz estate remained standing purely as a means of defense against the suit of Montilla.

"MR. PETTINGILL: I move to strike that answer out as giving simply the opinion of the witness.

"THE COURT: No, I will overrule that.

"MR. PETTINGILL: Note an exception.

"Q. Did Mr. Van Syckel say anything to you with respect to the cancellation of the lease?

"A. Yes, sir; on several occasions he spoke to me about the subject of canceling the lease, and I advised to the contrary, because that lease was the means of defense against any suits that Montilla might bring

during his lifetime, that that lease was entirely fictitious.

"Mr. PETTINGILL: Now, I move to strike all that out as the opinion of the witness.

"The COURT: It won't be all stricken out.

"Mr. PETTINGILL: I mean from the time he begins to say that this was a good defense and was all fictitious.

"The COURT: I am going to leave that there as far as it goes, but I won't let it go any further.

"Mr. PETTINGILL: I ask an exception."

It therefore results from the certificate made by the court below that the admissibility of the testimony is to be considered upon three grounds: (1) Whether it should have been excluded as a confidential communication between counsel and client; (2) Whether the previous testimony of the witness had not disclosed that the whole arrangement was a simulation and fraud of which the parties in whose behalf the witness was testifying could not avail themselves in support of their cross-bill; and (3) Whether the answers in the form stated did not express mere opinion or conclusions of the witness rather than facts which the court could receive and act upon.

(1) *This testimony involved confidential communications between counsel and client.*

In ruling upon this objection the judge below said, as already quoted in the above excerpt:

"It is well settled that when an attorney is employed by two persons to perform professional services jointly for them and the clients afterwards get into a dispute between themselves about it, communications made to the attorney at the time of the employment by either of them in the presence of the other are not privileged and either of the parties in subsequent litigation between themselves can even compel the attorney to testify without the consent of the other joint employer."

We have no disposition to dissent from the general principle of evidence thus laid down. But two questions arise: First, was the communication here sought brought within that principle? and second, is the rule of evidence in that regard in Porto Rico identical with the general principle?

As to the first question, it is to be noted that the witness nowhere intimated, nor was he asked, whether the conversations between him and Van Syckel had occurred in the presence of any representative of Sobrinos de Ezquiaga; on the contrary, the questions were distinctly confined to what Van Syckel alone said or did. It is also to be noted that neither of the answers contained in the assignment of error give the words or substance of any statement of Van Syckel to the witness. In the first answer he stated that Van Syckel followed his advice; that described a course of action, not a communication. In the second answer it is stated that Van Syckel spoke to him about canceling the lease, but no information is given as to what the former did or said about it. So that, we submit, the admitted fact that the witness at that time represented both parties has no bearing upon the admissibility of these statements.

As to the second question, the admissibility of these statements must, we think, be determined by the law of evidence of Porto Rico rather than by any generally accepted principle, and that law, Acts of General Assembly of Porto Rico, 1905, page 97, contained the following specific provision:

"SECTION 40. A person cannot be examined as a witness in the following cases:

* * * * *

"2. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him or his advice given thereon in the course of professional employment; nor can an attorney's secretary, stenographer, or clerk be examined, without the consent of his employer, concerning any fact the knowledge of which has been acquired in such capacity; but this paragraph shall

not be applied to an action between the lawyer and his client, where the existence, amount, validity and circumstances of an agreement about the payment of fees are at issue; but no communication is privileged under this subdivision when the same is made with the intention that it should be communicated to any person having an interest adverse to the client, or when the same was made in furtherance of a crime or fraud then being perpetrated or in contemplation."

The system of the civil law has been continued in Porto Rico (*Fernandez y Perez vs. Perez y Fernandez*, 202 U. S., 80, 97; *Romeu vs. Todd*, 206 U. S., 358, 368.) Under this system the provisions of law are intended to be expressed in specific written codes instead of general principles. Hence, it should be considered that this section of the statute quoted above was intended to cover this subject and leave no room for intendment. That conclusion is supported by the particularity of its language and by its expressing the analogous exception of communications in suits between lawyer and client; yet no exception is made of such communications in suits between the parties involving a subject-matter as to which they had jointly employed the witness as their lawyer.

(2) *Testimony disclosed illegal purpose in the alleged agreement.*

We have no intention of repeating the argument already made in considering the character of the cross-bill. We only wish to enforce the proposition that this testimony was exactly in line with its allegations, and that, if a combination and conspiracy of the kind outlined in the cross-bill and attempted to be proven by the testimony of this witness is illegal and unworthy of support and enforcement by a court of equity, then the decree of the court below ought to be reversed and the cancellation of the agreement of July 27, 1901, be vacated.

It may possibly be argued that the clause of the above-quoted section from the law of evidence allowed confidential communications to be disclosed when made "in furtherance of a * * * fraud." But that is only applicable when the purpose of the disclosure is to aid in setting aside the fraud and relieving its victim, not when the purpose is, as here, to assist a participant in the fraud in avoiding an alleged fictitious instrument and contract executed as a part of the fraudulent scheme.

(3) *Answers stated opinions, not facts.*

The motions to strike the first answer and all but the first sentence of the second should have been granted upon this ground. Whatever may have been the intention of counsel for appellees in asking the questions, these answers set forth no facts responsive thereto, but gave the opinion of the witness upon matters which might prove harmful to the appellants—and how harmful it did prove may be seen from the opinion of the court where the testimony of this witness is discussed.

We direct attention to the fact that, up to the moment of the asking of the questions covered by this assignment of error, no statement of the witness had cast the slightest doubt upon the meaning or genuineness of this document about which he had been questioned—the agreement to postpone the mortgage right. He had stated that the postponement of the mortgage to the lease "was the purport or subject of my advice and of the deed," and that the result had been "alternating the relative situation of the two liens," and that "the only thing done by him (Van Syckel) was to carry out the deed of postponement for the parties." Then he was asked the first question quoted in the assignment, which was in effect, "What did Van Syckel do or say about the advice you had given him as to the method of defending the suits?" and the reply consisted of two parts. The first part was re-

sponsive, "He followed my advice"; while the second part was not responsive, but entirely voluntary and foreign to the question. Counsel had asked, not for the witness' statement, but for Van Syckel's. Moreover, both parts of the answer must be seen to be the expression of opinion simply as to the effect of Van Syckel's conduct. Not a single fact is stated.

The motion should also have been granted as to the portion of the second answer indicated. It may have been the opinion of the witness that the lease was means of defense and that it was fictitious; but he stated no facts or circumstances upon which the court could determine for itself whether or not that opinion was well or ill founded.

Had these motions been granted, all that would have remained was the first sentence of the second answer, that "he spoke to me about the subject of canceling the lease and I advised to the contrary," and the assertion made above as to Acuña's testimony up to this point, that no statement of his had cast a doubt upon the meaning or genuineness of the document of postponement, would have been true of his testimony taken as a whole. Then the court below could not have made these statements the main basis for the granting of relief on their cross-bill, as is shown by many intimations of its opinion that it did, and especially where it is said (page 62, bottom):

"The language used in a later lease to the Santa Cruz Sugar Company plantation, that the rent shall be paid 'to the person or corporation which at any time shall appear to be the owner or lessee thereof,' but further confirms us in the belief that as between the parties themselves Sobrinos de Ezquiaga and Paul Van Syckel understood the object of the making of this postponing instrument to be exactly as the witness de Acuña testified it was."

This quotation indicates, what the rest of the opinion confirms, that the court below largely founded its conclusions as to the vital allegations of the cross-bill upon the testimony of

this witness, which we believe to have been inadmissible, not only for the specific reasons here suggested but also for the general reason that it contradicted and rendered inoperative the provisions and obligations of a solemn notarial contract without the proper foundation of deception, accident or mistake in the execution of the same having been proven.

Certainly it is often true that error in the admission of some evidence, even though it be material, will not be sufficient ground for reversal; but here, we submit, this testimony of Acuña was vital and is shown by the tenor of the opinion to have been accepted as sufficient to overcome the legal import of public documents; therefore, if improperly admitted and considered, the error involved in such ruling should be regarded as sufficiently important to require reversal of the decree below.

Resume.

We insist, therefore, that we have, in brief, sustained the following contentions:

1. The demurrer to the cross-bill should have been sustained and that pleading have been dismissed because

- (a) it had no equity on its face;
- (b) it disclosed as its only ground of relief a scheme fraudulent in law which equity could not countenance.

2. The findings do not warrant the cancellation of the lease of June 23, 1897, because

(a) the written instruments subsequently executed, which refer to all, recognize its continued existence, while nothing tends to show the contrary except oral testimony;

(b) the findings which state facts confirm it, while those which impugn it state only opinions or conclusions of law;

(c) the appellees are estopped to deny its continued existence both by their course of action up to the death of Van Syckel and by seeking and taking the benefit of the judg-

ment of the courts of Porto Rico which recognized and enforced it; and

(*d*) no oral agreement, however valid and legal in other respects, can be effectual to extinguish a real property right in Porto Rico.

3. The instrument of "Postponement of Rights" has not been affected or modified to the prejudice of appellants, because

(*a*) the finding of the court below that an "understanding" existed to that end showed that such understanding was identical with that alleged in the cross-bill; hence one which the court of equity will not lend its aid in enforcing; and

(*b*) for the reason stated in 2 (*d*) *supra*.

4. The estoppel attempted to be set up against appellants because of implied recognition of the "sole and exclusive ownership" of the property by the partnership was not supported by any evidence.

5. The objections to the testimony of the witness Acuña should have been sustained.

POINT SIX.

Reply to Some Contentions of Appellees.

As this brief is practically the same as that presented upon the former appeal, and as we presume the contentions in opposition will be substantially the same, we may avoid the necessity of filing a brief in reply by now discussing the main contentions presented in their behalf.

Preliminarily we wish to comment for a moment upon the suggestion made at the beginning of the argument for appellees as to the practical situation of the parties in case

our contentions were sustained. That suggestion ignores the fact that neither the lease nor the real estate itself entered into the original partnership agreement. The \$30,000 of assets consisted of \$13,000 worth of personal property, the *mortgage* upon Santa Cruz of approximately \$12,000, the value of a smaller farm a little over \$1,000, and \$1,100 of cash capital (p. 14). The mortgage was, of course, a lien upon Santa Cruz, and if Van Syckel had taken the course suggested, there would have been an even division of all personal assets and of the smaller farm and Van Syckel would have been required to pay one-half of the \$12,000 mortgage, or it would have remained a lien jointly owned by the partners. So the situation of the appellees would not have been as terrible as suggested.

(1) The first contention of counsel for appellees is based upon the proposition that the "instrument of postponement was not intended to be operative between the parties except upon a contingency which never arose," and to support that proposition he cites three decisions of this court. Before discussing these decisions it must be insisted that the proposition is not identical with the case before the court. On the contrary, the allegation of appellees was that the instrument was a pure fiction, to be used for their protection against Montilla, to be sure, but *never* to be operative *between themselves*. Even should it come into use against Montilla, it was still to be a mere pretense as between themselves. Therefore the case presented is not one involving a *real contract* which is to go into effect in the future at a certain time or upon a certain condition, but involves a paper drawn up solely for its anticipated effect upon outside parties and never to be endowed with life.

This distinction is well illustrated by two of the cases cited in the opposing brief, *Burke vs. Dulaney* and *Hartford Fire Ins. Co. vs. Wilson*, wherein the contracts involved were *bona fide* and the only question was whether the con-

dition subsequent which was to give rise to their obligation had occurred.

Moreover, in reality both those cases were, like *Michaels vs. Olmstead*, the third case cited, decided upon the principle that the conduct of one party to the contract in using it before the happening of the condition constituted a fraud upon the other party. The *Michaels* case in its last paragraph expressly so states, while the others involve it by necessary implication.

(2) Counsel for appellees lays some stress upon the fact that this instrument of postponement was an "unsealed declaration," intimating that its force and solemnity is diminished by the lack of a seal. But this court will be familiar with the fact that under the Spanish and Porto Rican law seals are unknown, the solemnity imported by a sealed instrument under the common law being supplied by the notarial execution, thereby constituting it a "public instrument," as required by the Mortgage law and section 1247 of the Civil Code quoted on page 47, *ante*. This is a sufficient answer to the contention that the instrument referred to failed to alter the rights of the parties because it "could have no such effect."

(3) The foregoing also disposes of the contention that said instrument "whether fraudulently conceived or not is a worthless and inoperative paper," which position counsel further supports by the statement that "appellants have never pretended to any title to the leasehold in question except under the instrument of postponement."

In this counsel is under a grave misapprehension. We have always claimed that the leasehold survived the foreclosure and still exists by virtue of its express recognition in the foreclosure decree, which was referred to in our brief and appears on pages 40 to 45 of the printed record. The ancestor of appellants was in possession of his 279 cuerdas under this lease, of the original existence and validity of which there is no doubt and the burden is upon the appel-

lees to prove the subsequent extinguishment thereof either by the foreclosure or by voiding "the instrument of postponement," hence the necessity of a cross-bill on their part.

(4) Counsel further asserts that our brief is "largely devoted to characterizations of the instrument of postponement as a fraudulent and iniquitous device." On the contrary, we contend that the said instrument was a wholly innocent, ordinary and *bona fide* document having the exact effect which its terms import. What we do characterize as fraudulent and iniquitous is the *purpose* with which appellees assert said instrument was designed. Counsel says there is nothing to indicate such a purpose. This issue is the very gist of the controversy, and, as we claim, the fraud to be in the very facts alleged by the appellees themselves and found by the court below to have been proven, the question for the determination of this court is clearly defined.

(5) Counsel again says that appellants "take the high ground that, being equally guilty with the cross-complainants of an attempt to defraud Montilla, their position as defendants to the cross-bill entitles them to defraud the cross-complainants." This is a form of statement striking in itself, but having no foundation in the record or in the attitude of appellants. Our contention is the contrary, that there was in fact no fraud on either side, but that the subsequent action in asserting that the instrument of postponement was simulated is the only false and fraudulent element in the whole transaction. Paul Van Syckel defrauded nobody and the present appeal is to prevent his heirs from being defrauded.

(6) In replying to our argument as to the error in the admission of the testimony given by the witness Acuña, counsel argued that such ruling was not reversible error because "this court cannot say that the finding of fact was not justified by other evidence in the case." In other words, the contention is that it must affirmatively appear that there was no other evidence. On the contrary we think

the rule to be that it must affirmatively appear that the evidence objected to was harmless.

Smiths vs. Shoemaker, 17 Wal., 630, 639.

Gilmer vs. Higby, 110 U. S., 407, 550.

Fidelity & Dep. Co. vs. Courtney, 186 U. S., 345, 351.

It has certainly been held that, where nothing appears to the contrary, the presumption will be in equity cases that the judge considered only the evidence material and properly admissible. But in the present case there is no room for presumption, because the judge below expressly indicated, both in his opinion and the findings (R., pp. 61, 63 and 82), his dependence upon the testimony of said witness Acuña.

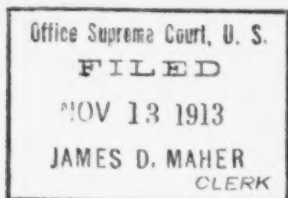
For the foregoing reasons we ask the court to sustain our appeal, to reverse the decrees of the court below so far as they are inconsistent with the existence, recognition, and effect of the lease of June 23, 1897, to complainant's ancestor, and to direct further proceedings not inconsistent with the law as it may be declared by this court.

N. B. K. PETTINGILL,

GEORGE H. LAMAR,

Counsel for Appellants.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 69.

ADA ELMIRA HIRST VAN SYCKEL ET AL.

vs.

JUAN JOSE ARSUAGA ET AL.

BRIEF FOR APPELLEES.

CHARLES F. CARUSI,
Counsel for Appellees.



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Statement of Facts.

In view of the statutory findings of facts made by the court below, as well as of the opinion of the court very fully reciting the facts, there will follow only a very condensed statement intended to bring out into relief the salient features of the transaction under investigation. It may here be remarked that not only will this court under its decisions treat the findings of facts of the court below as conclusive (see *inter alia* *Holloway vs. Dunham*, 170 U. S., page 615), but attention is here particularly directed to page 64 of the record in which the trial justice comments upon the clear, unequivocal, and convincing character of the evidence upon which its principal findings were made.

It would seem that one Montilla, the owner of the plantation "Santa Cruz," had prior to June 23, 1897, mortgaged his plantation for 11,000 pesos. On June 23, 1897, about a year previously to the American occupation of Porto Rico, one Van Syckel, an American resident of Porto Rico, secured from Montilla an indeterminate and perpetual lease of the plantation for a monthly rental of 105 pesos. Under this lease Van Syckel entered into possession of the plantation and commenced a dairy business. Montilla, repenting of the bargain he had made with Van Syckel, arranged with the mortgagees to foreclose their mortgages and thus cut out the lease. From this moment the bitterest hostility began between Paul Van Syckel and Montilla. The effort to wipe out the lease was blocked by Van Syckel paying off the mortgages and substituting himself as mortgagee. This was accomplished by a litigation begun by Van Syckel in the early part of 1900 in the United States Provisional Court, which resulted in a decree that the lease was a perpetuity and that Van Syckel should have the right to pay off the mortgages and continue to hold the lease (5th finding of fact). June 1, 1900, Van Syckel formed a partnership with the appellees and sold them a half interest in the plantation and the movable property upon it used in conducting the dairy business, cattle, etc., for 15,000 pesos, the partnership capital being 30,000 pesos and consisting of the plantation itself, which was put in at a valuation of 11,724.77 pesos, and the other property mentioned. The following January Van Syckel went to live in Havana, Cuba, and the dairy business was conducted by the firm of Van Syckel & Company.

Notwithstanding the adjudication above referred to in favor of Van Syckel and against Montilla, the latter appealed and began a series of persistent litigations, first against Van Syckel, and then against his successors in interest, P. Van Syckel & Company, which continued until December 30, 1905, when an appeal pending in the Supreme Court of the United States was dismissed and all differences settled by the payment to Montilla of 2,500 dollars in cash

by Paul Van Syckel & Company (13th finding). Sometime after the departure of Van Syckel for Havana and about six weeks before an action begun by P. Van Syckel & Company to foreclose the mortgage liens, which together with the leasehold had become a part of their partnership capital, a written instrument dated July 27, 1901, was filed whereby it was agreed that "all and whatever rights of preference the real rights of mortgage, of which review has been made, constituted over the plantation of "Santa Cruz," described, have or may have for all cases, including that of judicial claim, all these they postpone to the real right of lease mentioned in favor of Mr. Paul Van Syckel and his— (*causa habientes*) renouncing the right which they may have to ask for the rescision of said lease" (Record, page 19). This document referred to as the instrument of postponement, the court finds to have been executed and recorded for the sole and single purpose of a muniment of defense against Montilla in case he should reverse the decision previously referred to by which Van Syckel became the owner of the mortgage rights assigned by him to the firm (findings 12, 13, 14, and 15). It was by the same findings established that the said instrument was never intended to become operative between the parties except in the event of the contingency above named, which the evidence also disclosed never arose, Montilla not having succeeded in his attempt to redeem the mortgages, and a compromise with him having finally settled the controversy.

ARGUMENT.

The first seven assignments of error are addressed to the same two general propositions urged below by the appellants and there decided against them.

These are (1) that evidence was inadmissible to vary or impeach the instrument of postponement; (2) that the document was intended as a fraud upon Montilla, and for that reason, if none other, equity should not interfere to cancel it. If these arguments were sound, the situation would have been this: Paul Van Syckel, after capitalizing a dairy business consisting of a plantation and the cattle and utensils upon it at \$30,000, and having sold his partners a half interest for \$15,000 cash, to which sum must also be added one-half of the \$2,500 paid in settlement to Montilla, would have had the right at the end of two years, when the partnership first expired by its own limitations, to decline to renew it, and to himself enter into possession of "Santa Cruz" as lessee of the firm and pay his partners one-half of 105 pesos monthly rental. It hardly needed evidence to convince the court below that no such situation was ever in contemplation of the partners whether at the time the partnership was originally formed, or renewed, nor when the "instrument of postponement" was executed.

The court, however, has found upon evidence, which in its opinion (Record, page 64) it characterizes as "clear, unequivocal and convincing," that the lease was to have no life as between the partners in their accounting during or after the date of the partnership.

It, the "instrument of postponement," was not intended to be operative between the parties except upon a contingency which never arose, and then only for their protection against Montilla (fifteenth finding, Record, page 83). The first contention of the appellants as to the admissibility of evidence to vary or impeach the instrument of postpone-

ment is disposed of by the repeated decisions of this court that evidence is always admissible to prevent the fraudulent use of a written instrument by showing that it was not intended to be operative between the immediate parties.

Michels vs. Olmstead, 157 U. S., 196.

Burke vs. Dulancy, 153 U. S., 228.

Hartford Fire Ins. Co. vs. Wilson, 187 U. S., 467.

The second contention involves the application of the maxim that one must come into equity with clean hands. As the fraud relied upon by the appellants is alleged to center in the execution of the "instrument of postponement," the court is asked to examine that instrument which is set out in full at pages 17, 18, and 19 of the record. It appears to be a signed but *unsigned* declaration of the parties that whatever rights of preference the real rights of mortgage might have over the lease executed by Montilla to Paul Van Syckel the partners agreed to renounce in favor of Paul Van Syckel individually. A significant expression, found in the very clause under discussion, is "including that of judicial claim." Almost immediately after the execution of this "nude pact" the firm foreclosed its mortgages, with the result that the leasehold was wiped out unless the "instrument of postponement" could in some way have prevented it. Leaving aside the question as to whether prior to the execution of the "instrument of postponement" the leasehold interest constituted a part of the partnership assets, and also the question as to whether an instrument under seal or upon some valuable consideration might have been effective to make a subsequent lease owned individually take priority over an antecedent mortgage owned by the partnership and constituting its principal asset, leaving these questions aside, it is clear that as between the partners themselves the "instrument of postponement" being wholly without consideration could have no such effect, and that too independently of the real intention of the parties which, from the finding and opinion of the court, appears to have been that it might

prove advantageous in the firm's litigation with Montilla that the lease should be preserved from merger in the foreclosure proceedings and be held by Paul Van Syckel individually as trustee for the firm.

It is difficult to see what advantage Van Syckel & Company secured by the execution of this instrument. Whether fraudulently conceived or not it is a worthless and inoperative paper. If the court leaves the parties where it finds them, it finds the fee-simple title under the foreclosure in the partnership. In directing the cancellation of the instrument the court at best committed non-prejudicial error, as no title could pass under it or claim of right be founded upon it, and that independently of any estoppel against any of the parties to it or those claiming under them. The appellants have never pretended to any title to the leasehold in question except under the instrument of postponement. If that instrument is wholly inadequate to convey any title to them, the cancellation of the document is unimportant and the partnership property must be divided as provided by the decree below. The appellees as honorable men are interested, however, in having squarely decided an issue reflecting upon their characters and integrity. In this aspect a charge of fraud is always material. The court below by the sixteenth finding (Record, page 83) clears the appellees of this charge and vindicates the memory of the deceased father and husband of the appellants. The brief filed on behalf of the appellants is largely devoted to characterizations of the "instrument of postponement" as a fraudulent and iniquitous device, yet nowhere is the reader enlightened as to the nature of the fraud sought to be practiced upon Montilla or the courts. The court below could not find it, counsel have puzzled over it and if the appellants are in the secret they have kept it. It assuredly could constitute no fraud upon Montilla that the lease executed by him should be kept alive and binding upon him, in the event the foreclosure of the mortgages was set aside and he be given the right to redeem them.

But one thing more remains to be said under this head. Whether the appellants knew, at the time of filing their bill, of the agreement between the partners that the "instrument of postponement" should not be operative between them is, of course, conjectural. The existence of such an understanding was the principal issue in the case below, and the trial justice certifies, at page 89, folio 116, of the record, that the correspondence between Paul Van Syckel and the appellees was admitted in evidence by him as material to the issues. The correspondence itself is not set out in the record, and the knowledge of the appellants from the correspondence of Paul Van Syckel must remain conjectural. That, however, is of minor importance. They are here now in the Supreme Court of the United States asking this court to ignore the fact established by "clear, unequivocal and convincing evidence" that the instrument of postponement was not intended to be operative between the partners themselves, and to reverse the decree of the court below to the end that they may practice a fraud upon the appellees under cover of certain rules of evidence and of the maxim *in pari delicto potior est conditio defendentis*. As complainants below they ask the court to make an equitable distribution of partnership assets, but inasmuch as to that end the defendants below asked the affirmative relief that the instrument of postponement be declared a nullity, they take the high ground that being equally guilty with the cross-complainants of an attempt to defraud Montilla, their position as defendants to the cross-bill entitles them to defraud the cross-complainants. It is not believed that the decisions of this court cited in appellants' brief, filed on the first hearing of this cause, pages 34-39, are authority for such a view, nor that it is one which this court may be expected to sanction.

The Eighth Assignment of Error.

This assignment of error is based upon the alleged error committed by the court in permitting Señor Acuna to testify as to communications made by Paul Van Syckel and the appellees to him as their joint attorney.

The rule cannot be better stated than was done by the court below in overruling this objection (Record, page 86, folio 112): "It is well settled that when an attorney is employed by two persons to perform professional services jointly for them and the clients afterward get into dispute about it between themselves, communications made to the attorney at the time of the employment by either of them in the presence of the other are not privileged and either of the parties in the subsequent litigation between themselves can even compel the attorney to testify without the consent of the other joint employer."

Wigmore in his note to section 2312 of his work on evidence, volume 4, page 3235, states the rule as above and puts it on the ground that common interest and employment forbade concealment by either party from the other and that therefore such statements are not privileged between the original parties, and citing *inter alia*,

1877. Hebbard *vs.* Haughian, 70 N. Y., 54 (an attorney employed to draw a deed is competent to testify as to the directions received by him from the parties and as to the transaction between them at the time).

1901. Doheany *vs.* Lacy, 160 *Id.*, 213.

1888. Michael *vs.* Foil, 100 N. C., 178.

1888. Goodwin's Appeal, 117 Pa., 514.

1856. Parish *vs.* Gates, 29 Ala., 254, 260.

1889. Bauer's Estate, 79 Cal., 304, 312.

1896. Murphy *vs.* Waterhouse, 113 *Id.*, 467.

1885. Lynn *vs.* Lyerle, 113 Ill., 128, 134.

1888. Tyler *vs.* Tyler, 162 *Id.*, 525, 541.

1900. *Funk vs. Mohr*, 185 *Id.*, 385 (an attorney allowed to testify to the construction put by him on a contract made by him for one party with the other).
1887. *Hanlon vs. Doherty*, 109 *Ind.*, 37.
1888. *Colt vs. McConnell*, 116 *Id.*, 256.
1895. *Wyland vs. Griffith*, 96 *Id.*, 24.
1901. *Taylor vs. Roulstone*, 61 *S. W.*, 354.
1902. *Thompson vs. Cashman*, 181 *Mass.*, 36.
1886. *Cady vs. Walker*, 62 *Mich.*, 157.
1901. *Shove vs. Martine*, 85 *Minn.*, 29.
1898. *Adler vs. Helman*, 55 *Neb.*, 266.
1903. *Yahnke vs. State*, 94 *N. W.*, 158.
1895. *Livingston vs. Wagner*, 23 *Nev.*, 53.
1854. *Gulick vs. Gulick*, 38 *N. J. Equity*, 402.
1864. *Whiting vs. Barney*, 30 *N. Y.*, 330.

Further, even if the court's ruling were held to be wrong, no reversal could follow on this defective record.

The one essential fact in this case upon which the equitable relief of cancellation was predicated was the intent and purpose of the execution of the "instrument of postponement."

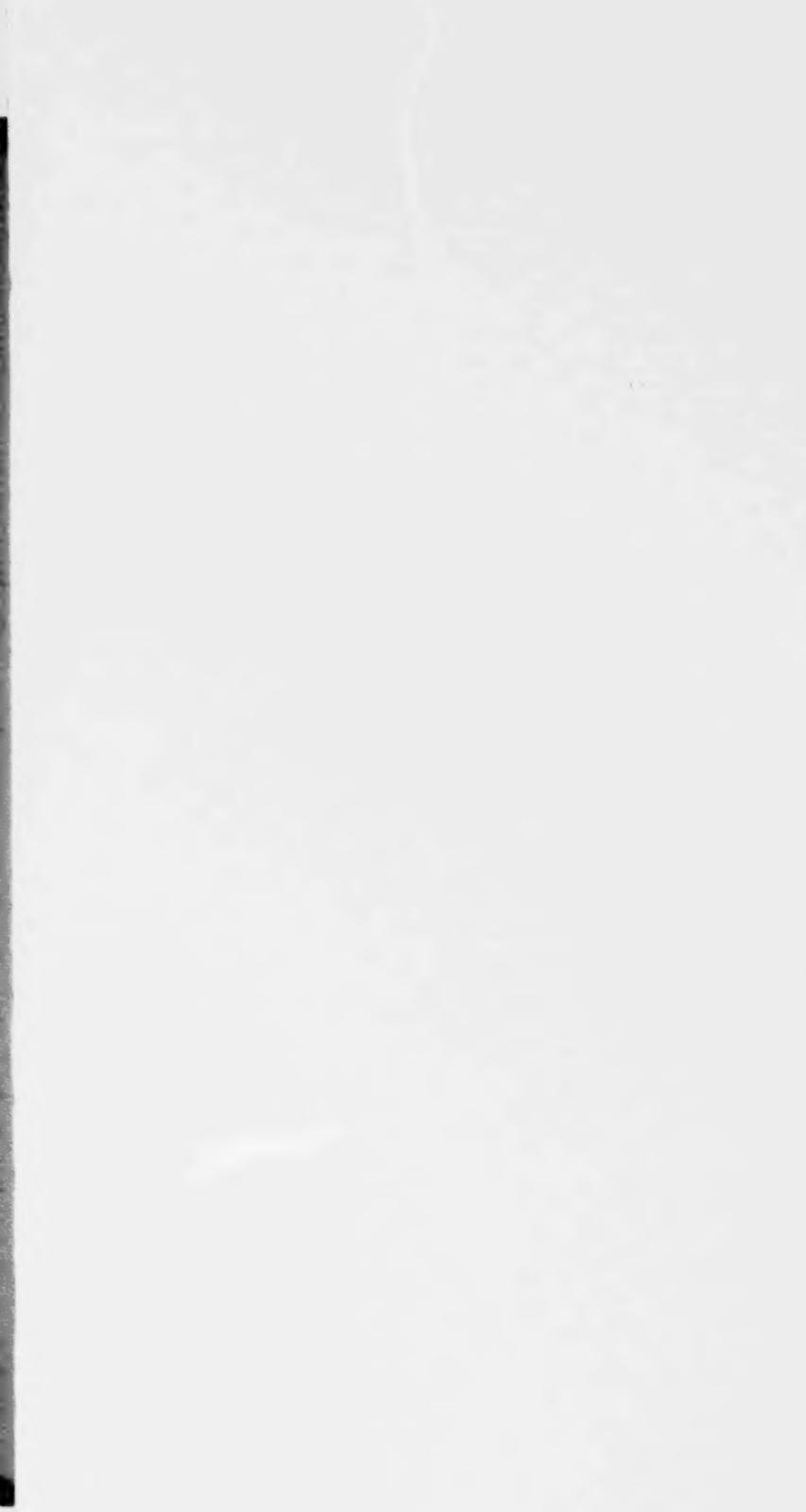
The evidence not being set out in the record and it nowhere appearing that Acuna's testimony was the only evidence upon this point, this court cannot say that the finding of fact was not justified by other evidence in the case. The evidence appears to have consisted of oral testimony before the court, numerous documents and a number of letters which passed between Paul Van Syckel and the appellees. Of these letters a large number were admitted without objection. It is highly probable that this correspondence alone, which the trial justice certifies (page 89, folio 116) he considered as material to his findings, would have justified the court's finding and made Acuna's testimony merely cumulative and any error in its admission entirely non-prejudicial (*Record*, pages 88, 89).

The burden is upon the appellants to show that without the alleged erroneously admitted evidence the findings of fact supporting the decree would not or should not have been made. This they have failed to do.

Respectfully submitted,

CHARLES F. CARUSI,
Counsel for Appellees.

[22909]



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VAN SYCKEL *v.* ARSUAGA.APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR PORTO RICO.

No. 69. Argued November 13, 1913.—Decided January 5, 1914.

Where appellant with ground challenges the adequacy of the findings of the court below to sustain the legal conclusions based on them, it is the duty of this court to consider and decide that question.

Under the local law of Porto Rico, if there is intrinsic ambiguity in a written instrument the right obtains to dispel such ambiguity by extraneous proof showing the circumstances under which the instrument was executed.

In this case there was such ambiguity in the contract involved as justified proof beyond the terms of the instrument to clear up the situation, and findings of the trial court based upon such proof are not void because of want of power to consider it.

The mere fact that parties seek in a lawful mode to protect legal rights by keeping alive an instrument under which possession to the property could be maintained in case of adverse decision in suits under another instrument does not indicate fraud in the transaction.

On the record in this case, *held*, that a partner who had kept alive a lease on property which his firm had acquired from him through another source of title so as to protect the interest of the firm against attacks from outside parties could not subsequently recover the property under the lease to the detriment of the other partners. There is evident lack of merit in the contention of a partner to recover property which he sold to the partnership and was paid for, without returning the price.

THE facts, which involve the validity of a judgment liquidating and distributing the assets of a copartnership in Porto Rico, are stated in the opinion.

Mr. N. B. K. Pettingill, with whom *Mr. George H. Lamar* was on the brief, for appellants.

Mr. Charles F. Carusi for appellees.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

When the court below delivered its opinion and made

a statement of facts it did not enter a final decree, but directed a re-statement of certain accounts to be made and ordered a survey and report as to the condition of certain real estate to the end that thereafter the case might be finally disposed of. Fixing their attention upon the controlling force of the reasons which the court had stated in its opinion and the decisive character of the findings embodied in the statement of facts, the parties who believed themselves aggrieved at once appealed, but their appeal was dismissed for want of a final judgment. 200 U. S. 624. The case is now here on an appeal from a final judgment and the contentions previously relied upon to secure a reversal are applicable and now require to be decided.

This suit was begun by the widow and heirs of Paul Van Syckel to liquidate and distribute the assets of two partnerships of which he was a member, viz., P. Van Syckel & Co. and the Santa Cruz Sugar Co. The defendants were the other members of the firms. From the petition and the documents annexed, from the answer, and a cross-petition filed by the defendants to construe and limit a document referred to as an agreement for "postponement of rights," as also from the issues taken on the cross-petition and from the opinion of the court and the statement of facts which it made it is beyond question that the only controversy between the partners arose from an assertion by the widow and heirs of Van Syckel that they were the holders of a subsisting lease covering an important piece of partnership real estate.

The solution of this controversy depended upon the answers proper to be made to the following questions: 1st, Did the lease which was owned by Van Syckel prior to the formation of the partnership of P. Van Syckel and Company pass to that firm as the result of its organization and the stipulations contained in the articles of partnership? 2nd, If the firm became the owner of the lease, was such lease extinguished by confusion (Civil Code, § 1192)

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as the result of the purchase by the firm of the leased property under a foreclosure sale, and 3rd, even although as a general rule, the lease was extinguished under the conditions stated, could the surviving members of the firm be heard to deny the existence of the lease as against the widow and heirs of Van Syckel in view of the public record concerning the lease, of the stipulations of the agreement styled postponement of rights of the foreclosure proceedings, and of other declarations made in other notarial acts to which the partnership and the partners were parties?

Concluding that these questions required an affirmative answer the court below rejected the claim based upon the existence of the alleged lease. The reasons which led to this conclusion were stated in an elaborate opinion and the facts which were deemed controlling were enumerated in a statement of facts. While conceding that there is no power to review the facts, and while further conceding that if effect be given to the facts found, the judgment is clearly right, it is yet insisted by the appellants that there should be a reversal upon the following grounds: *a*, Because the ultimate findings made by the court as to the non-existence of the lease were on the face of the record manifestly alone based upon inferences drawn from parol proof conflicting with the declarations of the parties contained in notarial acts and which under the local law were not lawfully susceptible of being overthrown by parol proof; and, *b*, because moreover error is manifest on the face of the findings as well as in the legal conclusions based on the findings because it was impossible to conclude that the lease had no existence without permitting the defendants to repudiate their declarations made in notarial acts, to base a claim of right upon their deceit and fraud and to discharge themselves and their property from an obligation by giving efficacy to their wrongdoing. As these propositions in their final analysis challenge the adequacy of the findings made to sustain the legal conclusions

based on them, it is our duty to consider and to decide them. As a prelude to doing so, we make a statement of the case as established by the findings and as elucidated by the opinion of the court and the documents therein referred to.

In June, 1897, by notarial act, Paul Van Syckel leased from one Montilla, the Santa Cruz plantation except a small portion previously leased to some one else. The rent was payable monthly and the term was indeterminate; that is, was to last as long as Van Syckel chose to pay rent. The property when leased was encumbered by mortgage. Van Syckel used the leased property for the business of raising cattle and carrying on a dairy. The registration officer refusing to record the lease because of the uncertainty of the term, Van Syckel, in October, 1899, made a notarial statement, fixing a term of six years and reserving the right, at will, to fix future terms. The registering officer refusing to record this statement, Van Syckel sued to compel its registry, and was successful, the Supreme Court of Porto Rico (or the Chief Justice thereof) having affirmed an order directing the registry to be made. The holder of the mortgage on the leased property having commenced executory proceedings to foreclose, Van Syckel sued in the Provisional Court created by the American military authority to enjoin on the ground of an alleged fraudulent combination between the debtor and creditor by foreclosure of the paramount mortgage to wipe out the lease and impliedly, on the further ground that having an interest, as lessee, in paying the paramount mortgage debt, he was entitled to do so and take a creditor's legal subrogation. (Civil Code, §§ 1203, 1210 and 1211.) The foreclosure proceeding was perpetually enjoined. The mortgage creditor acquiescing in the result, in March, 1900, transferred the debt to Van Syckel. During these proceedings there was pending in the local courts, suits in one or another

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form, brought by Montilla assailing the rights of Van Syckel. The exact character of these suits is not disclosed, but they are referred to in the findings and a statement on the subject is contained in *Montilla v. Van Syckel*, 8 Porto Rico, 153, 162.

In June, 1900, before a notary, Van Syckel and the firm of Sobrinos de Ezquiaga, an established and reputable commercial firm, formed a partnership styled P. Van Syckel & Company. The act recited that Van Syckel was the owner of enumerated property, viz: a small farm, a lot of cattle "as per inventory," a lot of personal property, constituting the plant of a dairy, such as cans, bottles, milk straining apparatus, carts, milk wagons, etc., and besides a mortgage paper secured on the Santa Cruz plantation, inventoried at about 11,000 pesos; and lastly a sum of money stated in the inventory as "value of working capital," amounting to 1111 pesos. These various items gave a total value of 30,000 pesos, and one-half, 15,000 pesos, was paid in cash by Sobrinos de Ezquiaga to Van Syckel as the purchase price of one-half the property which thus became jointly owned, and was by the joint owners, Van Syckel and Sobrinos de Ezquiaga, established as the capital of the new firm. The duration of the firm was two years and the purpose of its organization was declared to be the carrying on of a dairy business and the purchase of cattle. There were careful provisions as to the keeping and rendering of the accounts of the firm as to the equal power of management by the partners and an equal division between them of profits. There was a stipulation relating to the mortgage debt on Santa Cruz, providing that if the debtor, Montilla, paid the same the sum received should take the place of the debt as firm capital, and the firm should not be dissolved thereby, and the same result, it was expressly provided would follow in case Montilla should "recuperate the debt" and require an assignment of the same; that is, in case

Montilla by operation of legal subrogation compelled a transfer of the debt to another.

The year following, in July, 1901, the firm of P. Van Syckel & Company and P. Van Syckel individually were parties to a notarial act styled "postponement of right," by which the firm, after reciting its ownership of the mortgage claim on the Santa Cruz property and the paramount character of the mortgage as to a lease on the property, held by Van Syckel, waived the priority of the mortgage, gave precedence to the lease and expressly renounced all right of the mortgage creditor "to rescind the lease" as against Van Syckel and his "*causa habientes*." This act was placed on the public records. In September, 1901, Van Syckel & Company commenced executory proceedings against Montilla to enforce their mortgage debt and in due course, in November, 1911, the property was adjudicated to them for two-thirds of its estimated value and as was customary under the local law, the state of the record was referred to and the priority of the recorded lease was recited.

In May, 1902, the firm of P. Van Syckel & Company was by notarial agreement extended for a period of four years to the first day of June, 1906. The articles of extension recited the original organization, the purchase from Van Syckel of the property which constituted the capital of the firm, including the debt secured by mortgage upon Santa Cruz. It then recited the foreclosure and the purchase of the property at less than the face value of the mortgage debt, and stipulated that the capital of the new firm should not be thereby diminished as the property took the place of the debt as a partnership asset. It would seem that after the foreclosure and probably after the extension of the firm, the suits brought by Montilla in the local courts, to which we have previously referred, were decided against him, but in December, 1902, a new suit in the Porto Rican courts was by him

commenced against Van Syckel individually and the firm of Van Syckel & Company and its members to rescind the lease and to vacate the foreclosure proceedings, and to recover the Santa Cruz property. Speaking generally, as to the lease, the ground of attack was that it was void for uncertainty, that the notarial declaration of Van Syckel as to the six year term was unilateral and created no obligation and that his reservation of future right to fix terms at his will was purely protestative and void for uncertainty. As to the mortgage debt, the assertion was that the transfer by which Van Syckel had acquired it, consequent on the decree of the Provisional Court, had extinguished the mortgage by payment, as no subrogation was expressed in the transfer or could by operation of law have resulted therefrom. In the meanwhile and before the extension of the partnership, Van Syckel removed from Porto Rico with his family to reside in Cuba, but left a power of attorney with his partners to carry on the business of the firm, he returning at intervals to Porto Rico to supervise and participate in the business. Subsequently in leasing a portion of the Santa Cruz property, the lease was made to conform to the state of the public records and therefore was so drawn as to pass not only the rights of the firm, but the right of Van Syckel under his apparently existing lease. In 1905, in conjunction with one English, the firm of Van Syckel & Company formed an agricultural partnership called the Santa Cruz Sugar Company, for the purpose of developing the sugar industry on the Santa Cruz property and in that contract also the parties so acted as to make their agreement conform to the public records; that is, so as to recognize the lease apparently existing in the name of Van Syckel, as also the rights of the partnership in and to the property.

During the interval, the suit last referred to, brought by Montilla was decided against him in the lower court, and on his appeal in March, 1905, the judgment of the lower

court was affirmed by the Supreme Court of Porto Rico, Montilla prosecuting an appeal to this court, but shortly thereafter the appeal was dismissed because of a compromise effected with Montilla by which the firm of Van Syckel & Company paid a small sum in cash, thus terminating the long controversy. Shortly prior, however, to this being done, Van Syckel died in Cuba and the partnership having terminated not only as the result of his death, but by lapse of time, a controversy concerning the lease supervened and this suit followed.

Dealing with the facts which we have recited and the other proof before it, the court found that the sale made by Van Syckel to the firm of Sobrinos de Ezquiaga consisted of one-half the plant and assets of a dairy establishment and cattle farm by him carried on in part at least on the leased property and that not only as the result of implications necessarily arising from the provisions of the articles of partnership, but from the proof as to the situation of the parties and the manner in which they gave effect to the articles of partnership, it clearly resulted that the lease passed to the firm as a part and parcel of the contract by which the firm became the holder of the assets and plant.

Thus the court said:

"It is our opinion that Mr. Van Syckel sold a full half interest in his dairy business and all that constituted it, which included every right he had to all property concerned for 15,000 pesos to respondents Sobrinos de Ezquiaga."

And again, speaking on the same subject:

"We fail to see the force of the claim that Van Syckel put in a mere credit or mortgage debt, as an asset of this firm, the business of which was to carry on a dairy, and it looks ridiculous to say that these respondents simply invested in half of an interest-bearing mortgage. Van Syckel himself had been using this ranch for some time

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previous, for this same purpose as a dairy ranch and the firm continued to use it for the same purpose for some time thereafter. The firm could not ordinarily promote a dairy business by simply owning a mortgage which might be paid off any moment, so it seems to us to be plain that Van Syckel intended to include the possession which included the lease in the assets of the firm."

And this conclusion as to the ownership of the lease by the firm as the result of the formation of the partnership was reinforced by the following statements as to the conduct of the partners, their knowledge of the business, their participation therein, the accounts rendered concerning the same and the profits distributed. The court said:

"There is not a word of evidence in the case which shows that P. Van Syckel & Company ever paid any rent to Paul Van Syckel for this lease, or have ever given him any credit for any such rent or that Van Syckel ever asked the firm to so give him credit for any rent, although it is in evidence that Sobrinos de Ezquiaga sent Van Syckel numerous statements of their accounts of the firm's business while he was then living in Cuba."

And again:

"The overwhelming weight of the evidence in the case, shows that Paul Van Syckel was just as prominent and even a much more active party than Sobrinos de Ezquiaga was in all defense against, or attacks upon Montilla. A reading of the correspondence that is in evidence will convince any one of this."

Indeed, the conclusive effect of the comprehensive findings of the court concerning the ownership by the partnership of the alleged lease is fully illustrated by finding XIV, a portion of which we quote, and finding XVII.

"XIV.

"The said Paul Van Syckel during his lifetime agreed with Sobrinos de Ezquiaga by the terms of his partnership

in the firm of P. Van Syckel & Company and otherwise that said firm of P. Van Syckel & Company should be the sole and exclusive owners of the said farm 'Santa Cruz,' free and clear of any claims upon the part of said Paul Van Syckel by reason of said lease of June 23, 1897. . . ."

"XVII.

"The evidence in this case is clear, unequivocal and convincing that this lease of June 23, 1897, was to have no life or effect as between the parties in their accounting during or after the date of the partnership, but that the same was merged in the fee at the time of the adjudication thereof to said partnership of P. Van Syckel & Company, if not before."

Absolutely demonstrating, as these findings do, the want of merit in the contention that there was error in holding that the lease had no existence, if there was power to make and give effect to the finding, we come to consider those questions which at the outset we pointed out, are the only issues in the case.

Passing whether the face of the notarial acts to which we have referred do not in and of themselves fully establish the transfer of the lease by Van Syckel to the firm and its extinguishment by confusion as the result of the purchase at the foreclosure sale, but without intimating any opinion whatever to the contrary, let us consider the subject in a somewhat narrower aspect.

Undoubtedly, under the local law (Laws of Porto Rico, 1905, p. 70), if there was intrinsic ambiguity, the right to resort to extraneous proof to dispel it obtained; that is proof, to use the words of § 28 of the statute, showing "the circumstances under which it (the document or contract) was made, including the situation of the subject of the instrument, and of the parties to it . . . so that the judge be placed in the position of those whose language he is to interpret."

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Was there then such ambiguity in the articles of partnership concerning the method of carrying on the business for which the partnership was organized as to justify the admission of explanatory proof?

The articles leave no doubt concerning what the business of the partnership was to be, that is, the carrying on of a dairy and the purchase of cattle; but there is nothing in the articles which expressly shows where and how the proposed business of the firm was to be conducted, and when light on this subject is sought from the implications of the text, to say the least, such a state of mental uncertainty is engendered as plainly justifies the resort to proof to clear up the ambiguity. We say this because in the first place the property, one-half of which was bought from Van Syckel by Sobrinos de Ezquiaga and the whole of which was then put by the joint owners into the firm as its sole capital in trade, on the face of the paper appeared to be an inventory of the assets and property of a pre-existing business, which, from the nature and character of a large part of the tangible property sold, was a dairy and cattle business. In the second place because included in the articles bought was a sum of money stated to be "value of working capital" which so persuasively suggests the present purpose to continue an existing business as beyond all doubt to justify proof as to the situation of the parties and of the subject-matter to which the contract related. The proof then being admissible and establishing that Van Syckel was engaged in a dairy and cattle business upon the Santa Cruz property and that the assets and capital, one-half of which he sold, constituted the plant and assets of such business, which the firm continued to conduct, the question is, Was there such ambiguity in the contract as to the transfer of the lease as to again justify proof beyond the terms of the instrument to clear up that situation? Of this also we think there can be no doubt, for the following reason: The inclusion among the

transferred assets of the debt secured by mortgage upon the Santa Cruz property and the dominancy of that debt as to the lease, in and of itself creates obscurity as to whether, by the transfer of the paramount right, it was not contemplated to also pass to the firm the subordinate lease right, and that ambiguity becomes more apparent when it is considered that the established business was carried on by means of the Santa Cruz property and that possession of that property was necessarily a prerequisite to the continued conduct of the business. Indeed, this ambiguity becomes all the more marked when it is borne in mind that the interdependence of the lease and the mortgage was so great that the judicial power had compelled a transfer to Van Syckel of the mortgage because he was the owner of the lease. Certainly, as the possession of the Santa Cruz property for the purpose of the business was essential and that possession could only be enjoyed by the firm as a consequence of the right to the lease or the rights to be possibly acquired as the result of the foreclosure of the mortgage, the inquiry as to whether one or both rights were intended to be embraced was essential to a comprehension of the contract, and its solution was made so ambiguous by particular provisions of the contract as to justify proof for its clarification. This arises from the provision requiring the transfer of the mortgage to a third person by legal subrogation in the event Montilla should so exact. The resulting ambiguity is apparent since in such event, unless the mortgage was subordinated by agreement or by operation of law to the lease, the destruction or impairment of the rights, which it was the obvious intention of the partnership to create, becomes self-evident. So also unless the firm owned the lease it would have no interest to subordinate the mortgage to the lease and in the event the right of legal subrogation was exercised and the mortgage, by operation of law, passed to a third person, such person, unless the partnership

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owned the lease, would hold the mortgage as paramount to the lease and therefore have the power to destroy it. Indeed the duty to admit the proof, we think, would equally result if attention be not confined to the articles of partnership but be extended to those articles in conjunction with "the postponement agreement," the foreclosure sale, the extension of the partnership and the other notarial documents to which we have referred. But we do not deem it necessary to elaborate this view, as what we have said is adequate to demonstrate the want of merit in the contention that the controlling findings of fact made by the court below were as a matter of law void because of a want of power in the court to consider the proof upon which the findings were based.

This leaves only for consideration the contention that the action of the court was erroneous because it gave effect to fraud and deceit, and enabled the defendants to recover by alleging their own turpitude. Before we approach that subject, however, we dispose of another matter to which considerable attention was devoted in the argument at bar.

During the course of the trial Señor Vacuna, who had been the attorney of Sobrinos de Ezquiaga, of Van Syckel and of the partnership, was offered as a witness to prove that "the postponement agreement" was advised by him and was executed as a mere precautionary measure to protect the interest of the firm in the lease, that is, to preserve the lease in case, by an adverse decision in the Montilla suits, the foreclosure proceedings were annulled and the firm deprived of its resulting ownership of the property. In other words, that the purpose was to leave the lease in such a position upon the public records that if it should result from the Montilla suits that the title resting upon the foreclosure was destroyed the lease would not be treated as having been extinguished by confusion because on the records the ownership of the property and

the ownership of the lease had been in one and the same person. The court heard the witness over objection based upon the privileged character of the matter sought to be proved, and the form in which it was attempted to be elicited. But we do not think we need consider the subject because we are clearly of opinion, in view of the findings of the court concerning the sale of the lease to the partnership and its other findings of fact, that it is wholly immaterial to pass upon the objection because even if it be assumed for argument's sake to have been well taken, prejudicial error under the circumstances did not result. The weight of the contention as to deceit, fraud and wrongdoing is placed upon the postponement agreement, but in view of the ownership by the partnership of the lease and the fact that Van Syckel, although he had disposed of the lease, still remained upon the public records as its owner, we fail to perceive the slightest foundation for the contention as to fraud or wrong or deceit, resulting from the postponement agreement as applied to those who were parties to it. As the holder of both the lease and the mortgage, the firm had the right to seek to prevent the destruction of the one right by the enforcement of the other, a destruction which would have been threatened by a resort to foreclosure if the agreement to postpone the mortgage to the lease had not been put upon the records. This is obvious for this reason: If upon the records, the mortgage had continued to occupy a dominant position as to the lease, it would have resulted that the lease would have been extinguished by a sale to foreclose the mortgage and therefore if at such a sale, a third person had bought the mortgaged property, such purchaser would have taken the property free from the lease and the firm by the act of enforcing its mortgage would necessarily have extinguished its lease. Under these circumstances there is no ground for charging fraud and wrongdoing, simply because the parties sought in a lawful mode to protect their legal rights.

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In its last analysis the whole argument rests upon the assumption that because the parties to the contracts did not change the public records so as to cause them to conform to their contracts, they lost the right as between themselves to enforce their contract obligations, a proposition which is refuted by its mere statement. Looking at all the transactions from first to last,—the silence of the articles of partnership as to the lease, the act of postponement, the foreclosure proceedings, the extension of the partnership and the subsequent dealings, we can discover no ground by which it can be justly said that the parties were guilty of wrongdoing. The existence of the Montilla suits assailing the title to the property as well as the validity of the lease suffices to explain the constant purpose to retain on the public records divergent ownership of the two—when in fact they were united in one person—lest the loss of one, the title, might carry with it by confusion the loss of the other, the lease, because both had been on the record in the name of the same person. Admitting that if the title had been vacated, the benignity of the law by the application of the principle of *restitutio in integrum* would have prevented the loss of the lease by confusion and therefore the fear of the partners was unnecessary, that fact does not justify treating them as wrongdoers or characterizing their acts as fraudulent.

Indeed, when it is considered that the controversy is between partners and concerns acts in which they all bore an equal part, and that the charge of fraud is advanced to sustain the asserted right of one partner to recover, to the detriment of the other partners, property which he sold to the partnership and for which he was paid without a return of the price, the want of merit in the contention becomes apparent.

Affirmed.